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Canadian constables' assistant.

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THE

CANADIAN CONSTABLES' ASSISTANT:

BEING THE SUBSTANCE OF A CHARGE TO THE GRAND JURY OF THE COUNTY OF SIMCOE, AT THE APRIL SESSIONS, 1852.

BY

HIS HONOUR JUDGE GOWAN:

WITH NOTES AND ADDITIONS

BY JAMES PATTON, ESQ.,
BARRISTER-AT-LAW.

AS ORIGINALLY PUBLISHED IN THE "BARRIE HERALD."

BARRIE:
PUBLISHED BY J. W. YOUNG, "HERALD" OFFICE, DUNLOP STREET,
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Entered according to Act of the Provincial Legislature, in the Year of Our Lord One Thousand Eight Hundred and Fifty-two, by JAMES PATTON, in the office of the Registrar of the Province of Canada.

PREFACE.

The present appearance of this little work will be explained by an extract from the columns of the "Barrie Herald,"—"We were present and heard "Judge Gowan's Address to the Grand Jury of this County, at the April "Sessions, on the office of Constable. Feeling that the subject was one of "vast importance to the cause of law and order, and the notice of it par- "ticularly well-timed, we were anxious to add to the usefulness of our "Journal by inserting the address in its columns, and had taken steps in "order to enable us to do so. Subsequently the Magistrates of the County, "at the largest Session attendance that has taken place for years, by unani- "mous resolve, wisely ordered that it should be printed in pamphlet form "for the use of officers. Desirous to show our consideration for the Magis- "tracy, we determined to enlarge upon the address, which the excellent "and methodical arrangement renders a comparatively light task, by com- "piling details which would have been scarcely in keeping with an address, "and one intended chiefly for the information of Constables. In the added "matter, it is purposed to embrace, not only matters pertaining to the duty "of constables, but also some points connected with the office, yet relating "to parties other than constables. The address is in itself a concise guide; "our attempt will be to show portions more in detail, in order to enhance the "value of Judge Gowan's able production."

Herald, April 28, 1852.

Having gone through the Address the Editor more fully perceives an excellence and a completeness, which, from the constant and laborious round of duties the learned Judge has to perform, could scarcely have been anticipated. No change has been made in the address; the additions to the text, which are included between brackets [ ], and the Notes are by the Editor. Distinct headings have been put to each branch of the subject; the subordinate divisions are also distinguished; and a full analysis, which is given, may serve to a better understanding of the work, and facilitate reference to the several points treated of.

The object of the Address is to assist to a proper knowledge of the office of Constable, and the important duties which the law attaches to it; the Editor has endeavoured to make the publication a complete guide to the Canadian Constable, and generally instructive. Some guide was absolutely necessary—one could not be had by those interested—so that there was ample room to introduce this small publication.

The Editor trusts that no particular thing of any signification, relating to the office of Constable, will be found wanting in the work. In his desire to give it practical value—and that its usefulness should not be confined to the County of Simcoe alone—he has not been moved by motives of gain; any deficiency, therefore, that may be found in the production, he hopes may be regarded with indulgence.

Barrie, County of Simcoe,
August 20, 1852.

ANALYSIS

OF

HIS HONOUR JUDGE GOWAN'S

ADDRESS.

The matter added by the Editor is included between Brackets, [ ], but reading continuously with the Text, and will be found under appropriate heads.

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THE

CANADIAN CONSTABLE'S ASSISTANT.

I. PRELIMINARY OBSERVATIONS ON THE OFFICE AND DUTIES OF CONSTABLES IN CANADA.

I would now, gentlemen, tax your patience while examining a matter appropriated to the duties which bring us together, and not inopportune at this time. A great Institutional writer, in demonstrating the necessity for some acquaintance with the law of the land, says, "As every subject is interested in the preservation of the laws, it is "incumbent on every man to be acquainted with *those at least with* "*which he is immediately concerned;* lest he incur the censure as well "as the inconvenience of living in society without knowing the "obligations it lays him under;" and this has especial force when applied to *officers of the law:* for the preservation of the public peace, and the due administration of justice, greatly depends on the efficiency of subordinate officers.

Amongst the ministerial officers of Criminal Justice, constables form the most numerous class; and the duties of a constable, whether viewed in respect to their nature and extent, or consequence to the public and to the officer, present most important considerations. The office is one of the greatest responsibility. The constable's legal powers and duties arise from many sources: his authority in the preservation of the peace, and in arresting offenders, even without warrant, is very great, and may become a dangerous power in the hands of ignorant or bad men. If he exceeds his authority, he is compelled to compensate the party he has injured, and should he overstep those dangerous powers, which, as last resorts, are given to him, he is put upon trial for his liberty or his life: and the constable's ignorance will not excuse him for what would in law amount to misconduct or

neglect in the performance of his duties.(*a*) The want of a proper knowledge of his business must leave a constable without confidence in his own acts, and unfit him for efficient service in suppression of crime, and detection of offenders.

The number of constables appointed throughout the country, and the changing nature of the office, give a great and general importance to the considerations noticed, and indicate the necessity for information on the subject of a constable's powers, duties, and responsibilities.(*b*) Now the fact is, that constables are not always selected for their fitness, and they are in general grossly ignorant of their duties. Regardless of the serious consequences that may result from ignorance, they take no pains to inform themselves, and certainly will not incur any expense to do so. 'Tis true a constable acts at his peril, and may be punished for his misconduct or neglect; but the punishment of the officer *will not repair the mischief produced by his improper conduct.*

"The best laws that ever were made, can avail nothing if the "public mind is impressed with an idea, that it is a matter of infamy "to become the casual or professional agent to carry them into execu-

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(*a*) Such is the law, but it does seem a hardship to visit a constable with severity for failing to perform onerous and important duties at Common Law and by Statute, which have not been directly made known to him. In the "Provincial Justice," the duties are incidentally noticed, but there is no *special* guide to the office. If a Peace Officer meets with any difficulty, having no publication to resort to for instruction, to be safe, he must consult a lawyer, for which he pays, and cannot charge. It has always been a matter of surprise to us, that the several Courts of Quarter Sessions have not held out a premium to individual labour, for a compilation on the subject, for, without this, few would like to incur the labour and expense of preparing and publishing it; and what observation has made clear to us, a moment's reflection may to others, that if a guide book was put into the hands of constables, it would further the due administration of criminal justice, and be but fair to the officer. We are not aware of any English work published, which would be adapted to this Province: in many cases an English treatise might mislead the enquirer, and there are so many duties to be performed by the English constable, which are unknown here, that such a work would be both voluminous and expensive. The desideratum, a guide for the Canadian Constable, we believe will be found in the Publication, the Magistrates of the County of Simcoe have wisely resolved on.

(*b*) There are upwards of 560 Townships and Towns in Upper Canada, and it is probable that on an average five persons are appointed in each to the office of constable, making a total of 2800. The appointment is annual, the office is a burthensome one, and few persons desire to be re-appointed; and it may reasonably be assumed, that of the whole number appointed in each year, not more than one-third are continued in office. This constant change prevents constables acquiring even a small share of the necessary knowledge; and there being so few exempt from serving, a vast number of persons, from time to time, are called upon to occupy the office of a constable.

"tion." There seems to exist a stupid and absurd prejudice against the office of constable—an office as old as the monarchy of England —the cause of which in this country it is difficult to understand. These useful agents, in the protection of the public against outrage and depredations, are not a class apart from the inhabitants at large; they are appointed from amongst the people, continue amongst them, and are identified with the people, and are not compellable to serve beyond a limited time. Protectors of the property and lives of the Queen's subjects against internal outrage, they are engaged in a no less respectable profession than the soldier who opposes foreign aggression; and it is manifestly the interest of all to uphold the office in a respectable position, so as to correspond with the great and extensive authority the law has annexed to it. Men respected in the neighbourhood they are taken from, men of decent means—"the abler sort of men"—should be selected, and doubtless, would not unwillingly in turn bear the burden of acting, if the respectability of the office was properly appreciated and upheld.

Thank God *we* require no organized semi-military force, with deadly weapons in their hands, to uphold the dominion of law—but *Peace Officers* may not be dispensed with. Peace is essential to the existence of society, it is the foundation of every temporal blessing, and in proportion to the honesty, knowledge, and ability of the "civil defenders of the lives and properties of the people," are its benefits diffused.

From what has fallen under my own observation, I feel, that an effort, however feeble, towards making known the important duties of constables may further the efficient administration of Criminal Justice, and save those directly interested from falling into gross errors; and therefore I take advantage of this meeting of the Quarter Sessions, when constables are appointed and sworn in for the year, to afford some information on the subject referred to: and more especially now, as the progress of extensive public works in this County will bring into our sober law-respecting community, a class of persons who will not have the same interest we have in maintaining peace and order, and *who are not noted for their appreciation of either.*

I purpose taking only a partial and limited view of the office of constable. I would not have any one to suppose that all that might be said on the matters I intend touching upon is set down, or that all the duties of a constable are detailed—such is not the case. *To give some hints when better information is not at hand is all I aim at.*

II. THE OFFICE OF CONSTABLE.

The office of constable, in Canada, is co-incident with the introduction into the Province of the Criminal Law of England. It is of great antiquity; but whether constables came in with Justices of the Peace, or existed at common Law in England is of little moment to us, but the law writers who have examined the question say that *constables* existed as subordinate conservators of the peace long before *Justices of the Peace* were made. The word Constable, says an old writer, is derived from two Saxon words signifying *king* and *stable*, shewing that these ancient officers were reputed to be the stability of the King and Kingdom. [This derivation is referred to by Mr. Sergeant Stephens in his "Commentaries on the Laws of England," wherein he also says "but as we borrowed the name as well as the office of constable from the French, it seems more satisfactory to deduce it, with Sir Henry Spelman and Dr. Cowel, from that language; wherein it is plainly derived from the Latin *comes stabuli*, an officer well known in the empire; so called because, like the great constable of France, as well as the lord high constable of England, he was to regulate all matters of chivalry, tilts, tournaments, and feats of arms which were performed on horseback. This great office of lord high constable hath been disused in England, except only upon great and solemn occasions, such as the king's coronation and the like, ever since the attainder of Stafford, Duke of Buckingham, under King Henry VIII.; as in France it was suppressed about a century after, by an edict of Louis XIII.; but the constables of whom we now speak are supposed to have originally emanated from this high and important office."]

A constable is a ministerial officer of Criminal Justice; and his powers and duties it may be stated, as a general rule, are confined to the County to which he belongs. Like other public ministerial officers he is entrusted only with the *execution* of justice, or with a power of carrying the law into effect; and in doing so he must strictly follow the manner and means pointed out by the law of his office, or the warrant or other mandate by which he acts, and can in no wise use his own discretion, in contravention to these.

CONSTABLES.

The High and Petty constables are of the ordinary class, being appointed at a certain time, and for a year. Special constables are

appointed on *particular* emergencies, and with no fixed tenure, or are appointed to do a particular act.

ORDINARY.

Who may be appointed.]—As a general rule, every male of the age of twenty-one and under sixty, being an inhabitant of the place for which he is chosen, may be appointed to, and is compellable to execute the office of Constable.(*a*) The exemptions from appointment are confined chiefly to persons occupying public offices, or engaged in employments incompatible with a constable's duty. [The following classes of persons are exempt from appointment—Superior officers of the Law—Justices of the Peace—Coroners—Ministers—Teachers or Preachers of any congregation for religious worship—practising Barristers—Physicians—Surgeons—practisingAttornies and Solicitors –Officers of the Queen, including officers of Militia—Non-commissioned officers—Firemen, when enrolled according to law—Foreigners —the Prosecutor of a felon to conviction. No man that keeps a public house ought to be a constable. Subordinate officers in the admistration of Justice would be relieved on application to the Superior Courts, at Toronto, or removed and others be appointed in their stead by the Court of Quarter Sessions on representation to that tribunal. If a very ignorant or poor person, or a person weak of body be chosen he may be discharged and an abler person appointed in his room. It is also laid down that if any person is chosen constable and shall from religious scruples object to take upon himself the office, in regard to the oaths, or any other matter required to be done in respect to the office, be may execute it by a sufficient deputy, by him to be provided, to be allowed by such persons and in such mannner as such officers should by law have been allowed—(Burn's Justice and Dalton—title "Constable"—Stats. 9th Vic. Chap. 28 and 12th Vic. Chap. 36.)]

How appointed and sworn.]—For the effectual preservation of the peace, it is necessary that every township and village should be furnished with a constable, and the duty devolves on the general body of the magistrates at the April Sessions(*b*) in each year, to appoint a High

---

(*a*) The law requireth that every constable be apt and fit for the execution of the office, and he is said in law to be apt and fit who hath these three things—HONESTY —KNOWLEDGE—and ABILITY. HONESTY to execute his office truly, without malice, affection, or partiality—KNOWLEDGE to understand what he ought to do—ABILITY, as well in substance or estate, as in body, that so he may intend and execute his office diligently, and not, through impotency of body, or want, to neglect the place.—(Dalton, 85.)

(*b*) To secure the appointment of fit and proper persons, it is advisable that magis-

Constable, and such a number of discreet and proper persons as they in their discretion may think sufficient to serve in the office of constable in each and every township or place in the county. No single Justice, or Justices assembled in Petty Sessions, can take on themselves that duty, it belongs to the magistrates in General or Quarter Sessions, and they are the Judges to determine who shall be appointed and for what places; but if a constable die or remove during his year, any two Justices may make and swear in a new one, until the next Quarter Sessions; who shall approve of the officer or appoint another. [The form of warrant to constitute another a constable, on the death, &c., of a former constable, may be as follows, viz.:—

County of ——— } To C. D., of the———in the said County, yeoman.
To wit: } Whereas, A. B., late petty constable of the———is dead, whereby the said———is at present destitute of a constable to execute warrants, and to keep the Queen's peace. Now we———, and———, two of her Majesty's Justices of the peace, in and for the said County of———do hereby constitute and appoint you, the said C. D., petty constable in and for the said———, to serve her Majesty in that office, until the usual time of appointing a new constable,—the next April Sessions. This appointment being subject, nevertheless, to confirmation by the Justices at their next ensuing Sessions of the Peace for the County. And you are hereby required, personally to appear before a Justice of the Peace for this County, to take the oath of a constable.

Given under our hands and seals, at———, this———day of ———, in the year of our Lord, 18—.] [L.S.]
[L.S.]
]

Special Constables are appointed in another way, and so also are constables for cities, &c. [When the appointments are made at the April Sessions, it becomes the duty of the Clerk of the Peace to prepare a notice to each constable informing him of his appointment and requiring him to take the necessary oath before some Justice of the Peace. In practice it is usual to mail these notices, to the address of each constable, but to insure the timely receipt of the notification, and to secure full proof thereof, in case of prosecution for refusing to serve, the correct proceeding is to transmit to the Chairman of the Petty Sessions in the township or place, or if no Petty Sessions be established there, to the Senior Justice, the notices for the persons appointed constables for his Division that they may be duly served on each person. For the service of each notice the officer employed will be entitled to a fee of two shillings and sixpence.]

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trates generally should attend this Sessions, or at least submit the names of persons in their several localities, whom they could recommend to the Court for appointment.

A Constable, on being notified of his appointment, should go forthwith to the nearest Magistrate, who will administer to him the oath of office. [The oath is as follows:—

"You shall well and truly serve our Sovereign Lady the Queen, in the "Office of Constable for the ——— of ——— for the year ensuing, according "to the best of your skill and knowledge.—So help you God."—

(See Stat., 33 Geo. III., Chap. 2, Sec. 10.)

This form of oath should properly be entered in the Magistrate's Record Book, be subscribed by the constable, and the day of swearing noted. When all are sworn a list should be made out, and transmitted by the Magistrate to the Clerk of the Peace to be filed. If required the Magistrate can endorse on the notification of the Clerk of the Peace a memorandum of having administered the oath: it may be in these words:

Pursuant to the Statute in that behalf, and in accordance with the within written notice, the therein named ——— was duly sworn in as a Constable for the ——— by me at the town of———this day of ———A. D. 18——.

————————J. P., County Simcoe.

]

How appointment determined.]—The term of office is for one year, but constables are to be removed for good cause by the same authority which appointed them—the Justices in General or Quarter Sessions assembled.

Refusing to Act.]—If a constable duly appointed and notified, refuse to take the necessary oath, or refuse to execute the office, he is guilty of a serious offence, and may be punished by fine or imprisonment. It is not necessary there should be an *actual* refusal, for if the party does not attend a Magistrate to be sworn in, or afterwards does not execute his office, it is evidence of his refusal to do so; and for this he may be indicted either at the Assizes or Quarter Sessions. [If a constable refuses to be sworn, a Justice of the Peace may at once bind him over to the Assizes or Sessions to answer for the contempt; but there is no power vested in Magistrates to punish by summary conviction; (*Burn's*, title "*Constable*,") except in the case of Special Constables, with respect to whom there are the following provisions:

"And be it enacted, That if any person between the ages of eighteen "and sixty, upon being required to be sworn in as a Special Constable, by "any Justice of the Peace, upon any such occasion, shall omit or refuse to "be so sworn, unless for some cause to be allowed by such Justice at the time, "such person shall be guilty of a Misdemeanour, and it shall be lawful for "such Justice thereupon, to record the refusal of such person so to be sworn, "and to adjudge him to pay a fine of not more than forty shillings, which "fine shall be levied and made by the like process as other fines imposed "by summary proceedings before Justices of the Peace, or such person may

[be proceeded against by Indictment, or Information, as in other cases of "Misdemeanour.—(Stat. 7th. Vic. chap. 7 sec. 14.)

"And be it enacted, That if any person being appointed a Special Con-"stable as aforesaid, shall refuse to take the oath hereinbefore mentioned "when thereunto required by the Justices of the Peace so appointing him, or "by any two of them, or by any other two Justices of the Peace acting for "the same limits, he shall be liable to be convicted thereof forthwith before "the said Justices so requiring him, and to forfeit and pay such sum of "money not exceeding five pounds as to the said Justices so requiring him "shall seem meet; and if any person being appointed a Special Constable as "aforesaid shall neglect or refuse to appear at the time and place for which "he shall be summoned for the purpose of taking the said oath, he shall be "liable to be convicted thereof before the Justices so appointing him or any "two of them, or before any other two Justices of the Peace acting for the "same limits, and to forfeit and pay such sum of money not exceeding five "pounds as to the convicting Justices shall seem meet, unless such person "shall prove to the satisfaction of the said Justices that he was prevented by "sickness or such other unavoidable accident as shall in the judgment of the "said Justices be a sufficient excuse."—

(Stat. 10th and 11th Vic. cap 12, Sec. 5.)

]

SPECIAL CONSTABLES.

For the preservation of the peace.]—By the 14th and 15th Vic. chap. 77, Military and Naval Pensioners, enrolled under Imperial Acts as a local police force, &c., in any part of the Province are declared to be constables and peace officers for the locality in which they are employed, with all the powers and authority and obligations of such office (except as therein provided), and as an organized Police force they may be employed, when required, to aid the Civic power in the preservation of the Peace. There are several statutes under which Special Constables may be *appointed;* amongst them may be named the "Election Act," 12 Vic. chap. 27, and the "Public Meetings' Act," 7 Vic. chap 7, both eminently valuable enactments; but the 10 and 11 Vic. chap. 12, is a statute particularly relating to *Special Constables.*

Who may be appointed.]—Under the *Act 7 Vic. chap.* 7,—commonly called the "Baldwin's Public Meetings' Act"—for the purpose of keeping the public peace, and preserving good order at meetings called under its provisions, the Chairman of the meeting is enabled to command the assistance of peace officers; and any Justice of the Peace present at the meeting is required on the written application of the person presiding thereat, to swear in such a number of special constables as such Justice may deem necessary for the preservation

of the public peace at the meeting. And if *any one, between the age of eighteen and sixty*, omit or refuse to be sworn in as a special constable, it is a misdemeanour, subjecting the party to punishment on immediate conviction recorded, or by indictment to be afterwards preferred.

Although the terms used are so comprehensive, I incline to think they must be understood, subject to restriction of persons, even if within the prescribed age; persons engaged in employments not quite compatible with the duties of a constable, as Clergymen and Magistrates, persons weak of body, and (clearly) women, would not be liable to appointment; but as it is not at all likely that a Magistrate would call upon a clergyman, or a woman, or other unfit persons to act, I need not dwell upon the question of exemption.

It would in my judgment be advisable for parties called upon, even if above the exempted age, to act, if at all able; for at public meetings the moral influence of an old and respectable settler thus standing up in the cause of law and order, may often have a more beneficial effect than the strong hand. A word of caution! Persons present at public meetings have generally an opinion one way or the other on the matters discussed; those called upon to act as sworn conservators of the peace, should not allow their opinions to affect their duty: that should be performed "*without favour, without malice, without affection, without ill-will.*" They should know no one as *of* their "party" or *against* it—all such distinction should be laid aside; and the call of *peace and order* should make them deaf to party *watchword and cry*. The very appearance of partizanship is to be avoided; for a constable becoming a partizan, forfeits the protection the law otherwise affords him.

Under the *Election Law*, another of Mr. Baldwin's Acts, every Returning Officer and Deputy Returning Officer, from the time of taking the oath of office until the day next after the final closing of the Election, is a conservator of the peace; and for the maintenance of the peace and of good order at the election may require the assistance of constables and others present thereat, and is also empowered to swear in so many special constables as he may deem necessary. The persons liable to be called on should (to form a hasty judgment) be of the class from which the ordinary constables are taken. The caution just given against bias or partizanship will apply with equal force here.

Under the *Special Constables' Act* in cases of tumult or felony committed, or continuing, or reasonably to be apprehended, and the ordinary officers are not sufficient for the preservation of the peace,

two or more Justices may appoint *resident householders* or other persons (not exempt from serving the office of constable,) to act as special constables for such time and in such manner as to the Justices should seem fit for the preservation of the public peace, and the protection of the inhabitants and their property ; but sickness, or such other unavoidable accident, is admitted as a ground of refusal.

How appointed.]—It will be understood from what has been said, that special constables are, under the "Public Meetings' Act," to be appointed and sworn in by a Magistrate ; under the "Election Law," by the Returning Officer or any Deputy Returning Officer. Under the former Act there must be a written application to a Justice of the Peace to appoint constables ; but under neither of these Acts does it seem absolutely necessary that the appointment of a special constable should be in writing : nevertheless, where possible, it is better and safer for the constable, if it be so. Under the "Special Constables' Act," the appointment must be by two Justices at least, and by *precept in writing* under their hands—and those appointed may be removed for misconduct or neglect.

Persons wilfully refusing to act, or to obey orders, when sworn in, are made liable to severe penalties. [This is the provision contained in the fifth and sixth sections of Statute 10th and 11th Victoria chapter 12 :

"And be it enacted, That if any person being appointed a Special "Constable as aforesaid, shall refuse to take the oath hereinbefore mentioned "when thereunto required by the Justices of the Peace so appointing him, "or by any two of them, or by any other two Justices of the Peace acting for "the same limits, he shall be liable to be convicted thereof forthwith before "the said Justices so requiring him, and to forfeit and pay such sum of "money not exceeding five pounds as to the said Justices so requiring him "shall seem meet ; and if any person being appointed a Special Constable as "aforesaid shall neglect or refuse to appear at the time and place for which "he shall be summoned for the purpose of taking the said oath, he shall be "liable to be convicted thereof before the Justices so appointing him or any "two of them, or before any other two Justices of the Peace acting for the same "limits, and to forfeit and pay such sum of money not exceeding five pounds as "to the convicting Justices shall seem meet, unless such person shall prove "to the satisfaction of the said Justices that he was prevented by sickness or "such other unavoidable accidents as shall in the judgment of the said Justices "be a sufficient excuse."

"And be it enacted, That if any person being appointed a Special "Constable as aforesaid, and being called upon to serve, shall neglect or "refuse to serve as such Special Constable, or to obey such lawful orders or "directions as may be given to him for the performance of his office, every

["person so offending shall, on conviction thereof before any two Justices of "the Peace, forfeit and pay for every such neglect or refusal such sum of "money not exceeding five pounds, as to the said Justices shall seem meet: "unless such person shall prove to the satisfaction of the said Justices that he "was prevented by sickness or such other unavoidable accident as shall in "the judgment of the said Justices be a sufficient excuse."

The following is a form of Requisition to Magistrates to swear in constables under the "Public Meeting's Act:"

To ——— one of Her Majesty's Justices of the Peace in and for the County of ———

WHEREAS the Public Meeting now here holden ["for" &c., (stating the objects of the meeting) *or* "the objects whereof are set forth in the printed notice thereof hereunto annexed,(*a*)"] hath been called [*or* "declared to be"] and is a Public Meeting under and by virtue of the provisions of the "Public Meeting's Act" (7th Vic. chap. 7), and the said meeting and all persons attending thereat are within the protection of the said Act. Now (*b*) with a view to the preservation of the peace at the same, I ——— being the person required by law [*or* "duly appointed"] to preside over the same, do request and in Her Majesty's name require you forthwith to appoint and swear in such a number of fit and proper persons as special constables as you may deem necessary for the preservation of the public peace at said meeting.

Dated at the Town —— of ——— this ——— day of ———A. D. 18—

The appointment of Special Constables by the Magistrate may be endorsed on this Requisition as follows:

(*c*)To ———, ———, ———, and ———. In pursuance of the within requisition, and under the authority of the Act seventh Victoria chapter seven, I have constituted and appointed and do hereby constitute and appoint each of you a Special Constable to keep the peace and preserve good order at the within mentioned meeting, now here holden, and you and each of you are required forthwith to appear before me and take the oath required by law as such Special Constables.

Given under my hand and seal at the Town—— of ——— this ——— day of ——— A. D. 18— ———, J. P. [L.S.]

The Magistrate can read this appointment aloud, and those named therein are bound to present themselves instantly before the Magistrate to be sworn in. This form of oath will answer to be administered:

(*a*) It will be better in all cases to annex a copy of the Notice of the Meeting, and it is recommended that a form of Requisition should be prepared beforehand ready for signature.

(*b*) If a collision or breach of the peace *has* taken place, or other circumstances exist making the necessity for the appointment of Peace Officers more urgent, the facts may be here set forth, inserting the word "*therefore*" after stating them.

(*c*) This form may also be conveniently prepared beforehand.

[You and each of you do swear, that you will well and truly serve our Sovereign Lady the Queen, in the office of a Special Constable, without favour or affection, malice or ill-will; and that while you continue to hold the office you will to the best of your knowledge and ability, discharge the duties thereof faithfully according to law. So help you God.

The names of those sworn in should be noted by the Magistrate.

The appointment under the 12th Victoria chapter 27, may be as follows:

To ———, ———, and ——By virtue of, and in pursuance of the power and authority belonging to and vested in me, under and by virtue of an Act passed in the twelfth year of the reign of Her Majesty Queen Victoria, entitled "An Act to repeal certain Acts therein mentioned, and to amend, consolidate and reduce into one Act, the several Statutory provisions now in force for the regulation of Members to represent the People of this Province in the Legislative Assembly thereof." I ———, Returning Officer, [*or* "Deputy Returning Officer"] for the County of ——— [*or* "the Township of ———"] duly appointed and sworn according to the provisions of law in that behalf, have constituted and appointed, and do hereby constitute and appoint each of you a special constable, to maintain the peace and preserve good order at this present election, and until the final closing of the same, [*or* "until the final closing of the poll for this Township of ——"] and you and each of you, are required forthwith to appear before me and take the oath required of you by law as such special constables.

Given under my hand and seal at the Town ——— of ——— this ——— day of ——— A. D. 18—

———,
Returning Officer,
[or Deputy Returning Officer,] for the ———.

The directions respecting swearing in, and the form of oath above given for constables appointed, under the Public Meeting's Act, will be applicable to constables appointed under the Election Law also.

The following is a form of appointment under the Act 10th and 11th Vic., ch. 12.

(*a*) To ———, ———, ———, and ———. Forasmuch as it hath been made to appear to us——— and ———, Esquires, two of her Majesty's Justices of the Peace for the County of ———, on the oaths of ——— and —— being honest and credible persons * that ——, ——, ——, and divers other persons to the number of ——— and more [*or* "that divers persons to the said —— and ——— unknown, to the number of ——— or more"] at ——in the said County(*b*) unlawfully, riotously, and tumultuously, did meet together

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(*a*) This form may serve as a guide in framing the Information on which the appointment of Special Constables is to be grounded.

(*b*) The grounds and circumstances, must of course, greatly vary, but it is only such as are stated in the first clause of the Act which will warrant the interference of Magistrates thereunder,

[to the disturbance of the public peace, and being so unlawfully, riotously, and tumultuously assembled together, did [(here set out the riotous acts) *as* "place themselves in threatening attitudes with sticks, pistols," &c., (as the case may be) "and threaten to beat, maim, or kill" (as it may be) "one ———" *or* "certain ———" *or* "to tear down or burn the house of ———" *or* "have actually beaten, maimed," &c., (according to the facts) "and now remain together conducting themselves in a riotous and tumultuous manner to the terror of the Queen's subjects, and great disturbance of the public peace, and breach thereof" *or* * (in case of apprehended riot, after the * add)" that they have good grounds and foundation for believing, and do verily believe that ———, ———, ———, and other evil disposed persons meditate and intend, and have agreed together to commit on the ——— day of ——— at ——— a great riot (*or* "breach of the peace") by (state the acts intended)] and whereas we the said Justices find, are of opinion and believe that the ordinary officers appointed for the preservation of the peace in the said ——— are not sufficient for the preservation of the peace and protection of the inhabitants or the security of property in the said———. Now therefore we the said Justices under and by virtue of an Act passed in the twelfth year of the reign of our Sovereign Lady Queen Victoria entitled "An Act to amend the Laws relative to the appointment of Special Constables, and for the better preservation of the Peace," have nominated and appointed, and do hereby nominate and appoint each of you a special constable under and for the purposes of the said Act, to act as special constables and to serve Her Majesty in that office for the period of ——— days from the date hereof (*or* "until lawfully discharged from the said office) (*a*)—and we do hereby command and require you and each of you personally to appear before us or one of us, or before some other of Her Majesty's Justices of the Peace for the said County to take the oath of office required by law of you as such special constables.

Given under our hands and seals at the Town ——— of ——— this ——— day of ——— A. D. 18—(*b*)

———, J. P. [L.S.]
———, J. P. [L.S.]
]

Regulations in respect to.]—This last Act, [10th and 11th Vic. chap. 12] is a most important one. Special Constables sworn in under it, are bound to act *for such time and in such manner* as the Justices think fit; not only, in the Township or place for which

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(*a*) The first Section of the Act authorizes Magistrates to appoint "for such time as to the Justices may seem fit and necessary."—It has been adjudged when a constable was appointed for an indefinite time, his authority continued until specially determined.—(R. *vs.* Porter 9 Car. and P. 778.)

(*b*) This form may seem long, and it might be that a simple appointment without any preamble or reason assigned would be sufficient, but surplusage will not vitiate. The Editor ventures to suggest, that Magistrates who apprehend being called into action under this statute, should make out a private list of persons to be appointed, if necessary, and keep a blank form of appointment by him, to be filled in if required.

they are appointed, but also throughout the entire jurisdiction of the Justices appointing them. They have, and may exercise and enjoy, all the powers, authorities, advantages, and immunities, and will be liable to all such duties and responsibilities as any constable, appointed in the ordinary way, by virtue of any law or statute whatsoever; other provisions, are also contained, concerning the officer's duty when called out, &c.

Punishment for Obstructing.]—Any one assaulting or resisting a Special Constable, appointed under the "Special Constables' Act," while in the execution of his office, or who shall encourage others so to do, is made liable to a fine of ten pounds, on summary conviction therefor; or to such other punishment on indictment for the offence, as any persons are by law liable to, for assaulting any constable in the execution of his duty.

A battery committed within two miles of the place of election, or of any poll, the Election Act provides shall be deemed an aggravated assualt, and punished accordingly; and the like, under the "Public Meetings' Act," of a battery committed within two miles of the place of holding the meeting.

The general law for the protection of ordinary Constables in the performance of their duties, applies equally, to Special Constables.

For the performance of a particular act.]—A Warrant for Arrest, or a Warrant of Distress, may be addressed to a private person as well as to a constable; and the former may act under them, although he is not compellable to do so; but as this course is highly objectionable, as well as dangerous, Magistrates, except on a great emergency, always employ authorized officers. A private person acting under warrant, not being a known officer of the law, is required to give every satisfaction to the party he would arrest, as to his authority to act, and should use great caution in all his proceedings. He should keep close to the directions contained in his warrant, and to the general law in relation thereto. By performance of the thing in full for which he was appointed, the special officer becomes discharged from the office as to such act, and can interfere no further in the matter. Again I caution that the regular constable, only, should be employed.

III. THE CONSTABLE'S POWERS AND DUTIES.

THE POWER OF DEPUTATION.

The office of Constable may be executed by Deputy, when by reason of sickness or other sufficient cause the principal cannot execute the office himself; but the Deputy should be a fit and proper person for the office: he ought properly to be appointed in writing, and must be accepted and sworn in. [The following form of Appointment of a Deputy, may be used.

I, A. B., Constable of ——— in the County of ——— do hereby, make, substitute, and appoint C. D., of ——— in the said County, Yeoman, my true and lawful Deputy in the office of Constable, so long as I shall hold the same [*or* "during the continuance of my will and pleasure"] Dated at the Town ——— of ——— this ——— day of ——— A. D. 18—

A. B.

]

HIGH CONSTABLE'S PECULIAR DUTY.

The High Constable acts for the County at large, and has the superintendance and direction of all other constables in the County. He is the more immediate auxiliary of the Magistrate in the preservation of the peace; he is bound to attend the Quarter Sessions and to act upon the instruction of Justices of the Peace. He should report at every Session on the state of the Queen's Peace within the County.

THE GENERAL AND SPECIAL AUTHORITY OF CONSTABLES.

The authority of Constables is general and special; the office partaking of the nature of both. The general authority accrues by virtue of their own right as officers—the special authority accrues by the right of some one else.

All constables are *conservators of the peace by right* of their office, and are also *the immediate and proper officers of Justices of the Peace.* Under these two heads the subject matter may be for the most part collected and arranged.

AS CONSERVATORS OF THE PEACE.

Constables by virtue of their inherent powers may act without warrant in the prevention of crime, and for the arrest of offenders.

As the immediate and proper officers of Justices of the Peace, constables act under, and are bound to obey the lawful mandates of the Magistrates of their County.

CONSTABLE ACTING ON HIS INHERENT AUTHORITY AS CONSERVATOR OF THE PEACE.

Without Warrant.]—It is always safer for a constable to act under the warrant of a Justice of the Peace; and, where circumstances permit delay, he should take care to arm himself with one; but immediate interference is frequently necessary, and, as a constable, is in most cases, liable to punishment, for *neglecting* to act when the law permits him to do so, the nature and extent of his powers should be rightly understood, that on an emergency, he may with promptness and decision do what the law requires of him—for, as I have already mentioned, this general authority must be exercised according to the use of the office, as sanctioned by the law of the land.

In the Prevention of Crime.]—A constable, not only may, but *must* interfere, to prevent a breach of the peace, or any felonious offence which he sees about to take place: or when such is expected, on receiving proper information thereof, he should attend to deter the evil disposed, and prevent the perpetration of crime. "Laws for prevention, are ever preferable, to laws for the punishment of offence"—and in the proper exercise of his authority in this particular, the constable may, in his station, materially assist in preserving the peace of the Country, and in preventing violation of the law. With good tempered firmness, he will rarely fail in securing submission to his authority. Thus, if persons are about to commence a fight, on some sudden quarrel, or are assembled together with an intention of assisting each other against any one who will oppose them in the execution of some illegal act, or for the purpose of creating a riot, or are encouraging a riot, by word, sign, or gesture; or if a person in anger manifests any intention to injure the person of another; or even in case of threats to do any bodily harm to another; or to burn the house of another; or indeed to commit any crime against the Queen's Peace, if the party seems to be on the point of carrying out his threats—in all these cases the offending parties may be laid hands upon and restrained, or be arrested by the constable, and kept in custody in some secure place till the affair is past, or their heat and passion is over; or they may be brought to the nearest Magistrate to find Sureties of the Peace, or to be otherwise dealt with as he may deem right and legal. Should the arrest be made at night, the party may be confined in the gaol, or in a lock-up house, or other secure place, till the following morning; but then the constable should at the earliest convenient hour bring the party

before a Magistrate. He will be liable to an action if he does not, as would, probably, the party keeping the prisoner in custody, in case of long detention. Let this, however, be borne in mind, that if the skirmish is but trifling, and no hurt be inflicted, the constable may content himself with parting the affrayers, and commanding the peace. Interfering further in petty disputes can be productive of no good; pacification of the parties may answer every purpose. If the affray be great and dangerous, and a felony is likely to be committed, or a dangerous wound given, of course it is otherwise, the constable should arrest the parties at once, and where the affrayers have weapons of any kind they should be taken from them for the time. A constable will be justified in breaking into a house to prevent a felony being committed, and the like in order to suppress an actual affray likely to end in bloodshed, made in a house within the view or hearing of a constable; admittance in all cases being first demanded and refused; but more of this hereafter.

To suppress an affray, or accomplish an arrest, a constable may call to his assistance any private person present, who will be bound to render aid, under the penalty of severe punishment for refusal or neglect; but the constable must carry this in mind that, to warrant his interference, there must be evident appearance, that a felony or other crime against the Queen's peace is on the point of being committed, and this caution, also, may be given as to threats, that mere rash words, or abusive or violent language used to the constable, or to any other person, unless calculated to deter the officer from doing his duty, or directly tending to a breach of the peace, would not of themselves form a sufficient ground for the arrest of the wrong-doer.

Every constable should properly be provided with a painted staff, as an ensign of his authority, as well as a weapon of defence. This should be held so that it can be readily seen, for if the noise be too great to make himself heard, the production of his staff may be held a notification of the constable's authority. Where possible, let a Constable make known his office by word of mouth and call upon parties in the Queen's name to submit to his authority. Let him be cool and forbearing, nevertheless let him spare no pains but be strenuous and intrepid in the discharge of his duty—he has a good backer in the law, vindictive punishment awaits the man who dares to oppose its minister—the Constable. Above all, let him not become the partizan of either party in any affray or disturbance; for from the moment he does, he becomes the minister of mischief, and ceases to be the minister of the law, and is stripped of all its protection.

Arrest on View.]—Whenever *a breach of the peace*, or any offence which includes a breach of the peace, is committed in the presence of a constable, he can arrest the offender and bring him before the nearest Magistrate, to be dealt with according to law.

A breach of the peace may be in an assault; for example,—by one person striking another with his hand, a stick, a stone, or any thing put in motion, by the offender. Indeed, laying hold of, or the least touching, be it ever so small, of another's person, if done in an angry, rude, insolent, or hostile manner, is a battery and breach of the peace. If an affray be committed, as by two or more persons fighting in a public street or highway, it is a breach of the peace; —offences of this kind are termed in law misdemeanours.

Unless under the special provision of certain statutes, a constable cannot arrest, without warrant, for a misdemeanour, unaccompanied by a breach of the peace; and even for simple breaches of the peace, the constable will not be safe in acting, unless the offence is committed in his view. (Had time permitted, my intention was to have made out a table of offences, giving a short description of each, and distinguishing between *Misdemeanours* and *Felonies*, and noting certain minor offences for which parties may be arrested under particular statutes.)

If *a felony* be committed in the presence of a constable, it is his duty at once to take the offender into custody; and he is bound at all risks to use his best endeavours to do so. Nothing short of imminent danger to his life will excuse him for allowing the offender to escape.

It would serve little purpose, to give a definition of what constitutes a felony. It is sufficient to say, that it is an offence higher than a misdemeanour. I would in general terms enumerate certain offences amounting to felony, viz.: felonious homicide, or the killing another under any circumstance, except by mere misfortune, or clearly in self defence;—unlawfully and maliciously shooting at any person, or attempting in any manner to discharge any kind of loaded fire-arms at any person, with intent to maim, disfigure, disable, or do some other grievous bodily harm to such person, or with intent to prevent the lawful apprehension or detainer of any person; —assault with intent to rob—with menaces or by force demanding money or property of any person, with intent to steal the same;— highway robbery—house robbery—stealing any horse or cattle of any kind, or other valuable property, public or private;—breaking into a

house with felonious intent;—unlawfully and maliciously setting fire to a dwelling-house, out-house, church, meeting-house, school-house, or any other building, whether public or private property; or pulling down, or in any way destroying a public bridge;—unlawfully and maliciously killing, maiming, or wounding any cattle. These, and many more offences not enumerated, are termed in law, *felonies*.

But a Peace Officer will remember, that it is not for him to determine any nice questions as to criminality, where an act has been committed, bearing a felonious aspect; for instance, in every case where life has been lost, the party occasioning the death should be secured; it is for others to say whether any fault attaches or not; and the term *malice*, used in respect to offences, is not to be understood in the ordinary sense, as enmity of heart against the person injured. Where a man commits an unlawful act under such circumstances as are ordinary symptoms of a wicked spirit, and a heart regardless of social duty, in general the presumption of law is that he acted advisedly, and with an intent to produce the consequences which have ensued—that is malice in construction of law.

Upon Information from others.]—In simple breaches of the Peace, as has already been mentioned, a constable should have view of the offence to authorize his arresting without a warrant; but although he may not have actual view of a felony committed, yet if he has *information of it*, and that *a positive charge is made* by any one individual against another, the constable is bound to take up the party charged with having committed the felony; and even where no positive charge is made, and a felony has been committed, and *strong circumstances of suspicion*, sufficient to induce a reasonable belief of the party's guilt, are laid before the constable, he may arrest the supposed offender, and he will be justified in doing so, although it should afterwards turn out that the party is innocent, or that the charge was wholly unfounded. As in this last case the constable will not be protected from the consequences of an improper arrest, unless he has acted fairly, and upon strong grounds of suspicion, he should, if the individual making the charge is not known to him as a credible person, by some means find out the character of the complainant before he, the constable, ventures to act on the information. And the known respectability and good character of any person charged, and the consequent improbability of his having committed the offence, should always induce the constable to be very cautious before he interferes. He must exercise a sound discretion as to whether he will proceed on the information given to him, or leave

the party informing, to apply to a Magistrate. Where a constable arrests the supposed offender on the *positive charge* of another, or *on reasonable grounds of suspicion* laid before him, the responsibility rests with the party accusing and not with the constable, although, as before stated, the charge prove to be unfounded.

On the Officer's own suspicion.]—A Constable may himself, from circumstances within his own knowledge, discover, or on reasonable or probable grounds, suspect that a felony had been committed, or, on joining together various items of information received, he may have reason to suspect some particular individual of having committed a felonious crime. Where matters and circumstances which the constable is acquainted with are sufficient to raise a strong presumption—to make it very probable—that *a felony* had been perpetrated by a party, he is justified in arresting the party he suspects for it; and this although it should afterwards turn out, that no felony had been committed, or, that the party arrested was not the guilty party; provided, indeed, that the constable had *fair and reasonable grounds* for his suspicions.

The causes of suspicion will depend much on the nature of the offence—the place where, and the way in which it was committed;—its being the obvious result of criminal negligence or design;—the apparent motive,—and these causes must necessarily vary in every particular case. The ordinary legal grounds of suspicion are said to be these, namely—the common fame of the country, being found in such circumstances as induced a strong presumption of guilt, as coming out of a house where a murder has been committed with a bloody knife in one's hand; being found in possession of any part of goods stolen without being able to give a probable account of having come honestly by them; the behaving oneself in a manner to betray consciousness of guilt; being found in company with one known to be an offender; the living an idle, vagrant and disorderly life, without having any visible means to support it. Some of these grounds are vague and indefinite, and require support from other circumstances to form reasonable grounds for suspicion.

Caution as to arrest without warrant.]—In all cases of arrest it is usual and proper for the constable to make known his office, and to demand of the party to surrender in the Queen's name, before recourse is had to violent measures. Private persons present may be called upon, and are bound to aid the constable in effecting the arrest. When the offender is secured he should be brought at once before the nearest Magistrate to be examined, and that the

charge may be investigated. If the hour be unseasonable, as at night, the party may be secured in some convenient place till next day, or may be detained to prevent rescue, or if the party be sick; but no unreasonable delay in bringing him before the Magistrate should take place.

As I purpose noticing arrests and resistance thereto more particularly, this will be a sufficient caution, to note, under the head of "Arrests without warrant." Before concluding this branch of the subject—arrests without warrant—it is proper to add that private individuals are not only permitted but enjoined by law to arrest an offender if present at the time a felony is committed, or a dangerous wound given, and seeing the same done. [It seems difficult to find any case wherein a constable is empowered to arrest a man for a felony committed or attempted, in which a private person might not as well be justified in doing it. But the chief difference between the power and duty of a constable and a private person, in respect of such arrests, seems to be this, that the former has the greater authority to demand the assistance of others, and is liable to the severer fine for any neglect of this kind, and has no sure way to discharge himself of the arrest of any person apprehended by him for felony, without bringing him before a Justice of the Peace, in order to be examined; whereas a private person, having made such an arrest, needs only to deliver his prisoner into the hands of the constable.

But it is said, that a constable hath authority not only to arrest those whom he shall see actually engaged in an affray, but also to detain them till they find sureties of the peace; whereas a private person seems to have no other power, in a bare affray, not attended with the danger of life, but only to stay the affrayers till the heat be over, then deliver them to the constable, and also stop those whom he shall see coming to join either party. But it is difficult to find any instance wherein a constable hath any greater power than a private person over a breach of the peace out of his view; and it seems clear that he cannot justify an arrest for any such offence, without a warrant from a Justice of the Peace, &c.—*Hawkins.*]

As the Officer of Justices of the Peace.]—As already mentioned, constables, being the proper officers of Justices of the Peace are bound to obey their lawful mandates, these mandates are given by verbal order, or by written warrant of a Magistrate.

Acting on verbal order.]—Magistrates are emphatically designated *Conservators of the Peace*, it being the first and chief duty of their

office: and the Queen's Commission to them directed, empowers every individual Magistrate to employ his own authority, and to command the help of others, to restrain and pacify all persons who in his presence and within his jurisdiction, by word or deed, shall go about to break the Queen's Peace.

Should a Magistrate, therefore, be present when a riot, an affray, an assault, or a felony is apprehended, or near being committed, or going on, or has been actually perpetrated, being the constables superior officer, it, in some measure, diminishes the constable's responsibility should he apply to the Magistrate for direction, and follow the orders given. If a magistrate has view of facts which authorize his interference as a conservator of the peace, he may at once, by word of mouth, order any private person, and of course a constable, to arrest parties offending, and this order should be executed promptly by the officer—I mean if the order be such an one as the Magistrate has power to give—for it is a clear principle of law, that the command of a superior officer will not justify the inferior in the violation of law. This caution is scarcely necessary in this county, but could not properly be omitted.

ACTING UNDER ORDINARY WARRANT.

His duty on receipt of Warrant.]—As already mentioned, a constable is the proper officer of Justices of the Peace, and bound to execute their lawful warrants, with all speed and secrecy, and strictly according to the direction therein; and if in any particular he fails to perform his duty herein, he is liable to severe punishment.

When a warrant is put into the hands of a constable to be executed, he should examine it to see in the first place, to whom it is directed; and if directed to him by name, or by name of his office, or to him or other constables by name, he is empowered to act upon it. He should in the next place, ascertain from it the nature of the offence—whether felony, breach of the Peace, or simple misdemeanor—as that must in a great measure regulate his future proceeding. He then sees if the party named, or described in the warrant, is a person personally known to him, if not the constable should find out, what country the party is a native of—his personal appearance, manner, the dress he is supposed to wear, and any other peculiarity the individual may be recognized by—and, whenever it can be done, the constable should bring with him some person able to point out the party—for the officer is not only bound to use his best exertions to make an arrest, but at his peril makes it; for should the wrong person be taken up, a constable, who acted unguardedly,

would be liable to an action. [It may be well here to notice, that the name of the party to be apprehended should be accurately stated in every warrant; but if the name of the party be unknown, the warrant may be issued against him by the best description the nature of the case will allow, as "the body of a man whose name is unknown, but whose person is well known, and who is employed as the driver of cattle, and wears, &c."—(Chitty's Crim. Law, 39.)]

The arrest may be made in the night, as well as in the day, but, except for treason, felony, or breach of the peace, arrests on a Sunday are prohibited.

Execution of the Warrant.]—Although the constable to whom the warrant is directed must personally execute it, yet any other officer or person may lawfully *assist* him. If the warrant be directed generally to all constables of the county, no one should execute it out of his own precincts, for in such case it is to be taken respectively to each of them within their own division, and not to one of them to execute it within the division of another. But if it be directed to a particular constable by *name*, he may execute it anywhere within the jurisdiction of the Justice, but is not *compellable* to execute it out of his own constablewick, or place he is appointed for. [With respect to the *person* who may execute the warrant, it seems that if it be directed to the *Sheriff*, he may authorize others to execute it, but if it be given to an inferior officer, he must personally put it in force, though any one may lawfully assist him. Where an officer employs others to assist him he must be so near as to be acting *in the arrest* in order to render it legal.—(Chitty's Crim. Law, 48 and 49.)]

The jurisdiction of a Justice of the Peace is only co-extensive with the County he is appointed for; and a warrant cannot be executed out of the county or jurisdiction of the Magistrate granting it.

Where the party, against whom the warrant has issued, is in another county, it should be backed by a Justice of that county before the constable makes an arrest under it. The constable only requires to lay the warrant before the Justice, who will make the necessary endorsement upon it, upon proof of genuineness. [The warrant of a Justice of the Peace cannot be executed out of his county unless it is *backed*, that is endorsed by a Justice of the county in which it is executed. By Stat. 24 Geo. II. chap. 55, sec. 1, it is enacted,

That "if any person, against whom a warrant shall be issued, shall

"escape, go into, reside, or be in any place out of the jurisdiction of the "justice granting the warrant, either before or after the issuing thereof; any "Justice for the county or place, where such person shall so escape or be, "upon proof on oath of the handwriting of the Justice granting such warrant, "shall endorse his name thereon; which shall be a sufficient authority to "the person bringing such warrant, and to all other persons to whom the same "was originally directed, to execute the same in such other county or place, "and to carry the offender before the Justice who endorsed the warrant or "some other Justice or Justices of that county, if the offence be bailable, and "the offender be ready to give bail for his appearance at the next Assizes or "Sessions for the county or place where the offence was committed; and "such Justice or Justices shall take bail accordingly, and shall deliver the "recognizance, with the examination or confession of the offender, and all "other proceedings relating thereto, to the constable, or other person, who "shall (on pain of £10 to him who shall sue) deliver over the same to the "Clerk of Assize, or Clerk of the Peace, where the offender is required to "appear. And if the offence be not bailable, or he shall not give bail to the "satisfaction of the Justice before whom he is brought, the constable or other "person shall carry the offender before a Justice of the proper county or "place where the offence was committed, there to be dealt with according "to law."

In *Rex* v. *Kynaston*, 1 East. 117, the Court of K. B. held, that proof on oath, of the handwriting of the Justice who granted the warrant, made before the Justice of any other county, to whom the same was tendered for endorsement, was sufficient to oblige him to endorse the same, for execution within his jurisdiction, being of opinion that he had no discretion over the subject matter, and on affidavit of his refusal to endorse, granted a *mandamus* to compel him. Ld. *Kenyon*, C. J. said,—The Justices by whom the original warrant was issued, had a discretion to exercise upon the matter submitted to them; but the Magistrate who merely endorses the warrant of another, under this Act, is not answerable for the legality of it, which remains at the hazard of him who first granted it.

The Form of backing or Endorsement, may be thus:

County of ———— to wit. } Forasmuch as proof upon oath hath been made before me J. P. Esquire, one of Her Majesty's Justices of the Peace for the said County of ———, that the name A. B. is of the handwriting of the Justice of the Peace within mentioned; I do hereby authorize A. C. who bringeth to me this warrant, and all other persons to whom the said warrant is directed, to execute the same within the said County of ———.

Given under my hand the ——— day of ——— in the year ———.

————, J. P.

And the Justice may further order (if he think fit) the party, according as she shall appear bailable or not bailable upon the face of the warrant, to be brought before himself, or some other Justice or

Justices of that county, or to be carried back into the county from whence the warrant did issue.—(Burn's Justice, Vol. 5, p. 576.)]

A general warrant is in force, and may be executed at any time during the life of the Magistrate who grants it. An arrest, as I before mentioned, at night is good, and for treason, felony, or breach of the peace may be made on a Sunday.

What an Arrest.]—An arrest is the apprehending or detaining *of the person* in order to be forthcoming to answer an alleged or suspected crime. The officer should not merely content himself with securing the offender, but should actually *arrest* him; so that if he escape, or is rescued by others, he or they may be subject to the penalties of *escape on arrest.*

To constitute an arrest, the party should, if possible, be touched by the constable: bare words will not make an arrest without laying hold of the person, or otherwise confining him. But if an officer come into a room, and tell the party he arrests him, and locks the door, this is an arrest, for he is in custody of the officer. Or if in any other way the party submit himself by word and action to be in custody, it is an arrest.

How made.]—A constable sworn and commonly known, acting within his own township, need not show his warrant, but he should in all cases acquaint the party with the substance of it, and the cause of arrest.

In every case where the constable acts out of his own township where he is not known to be a constable, he should produce his warrant if required; and to avoid all excuse for resistance, it is recommended, whenever demanded, that the constable should produce and allow his warrant to be read; but in no case is he required to part with it out of his possession. If the party snatch or take the warrant the constable has a right to force it from him, using no unnecessary violence in doing so.

Resisting Officer.]—A constable is bound to use the *utmost* caution and *forbearance* in case of resistance, but he may lawfully use force to overcome resistance. The force used should not exceed the necessity of the case, and should cease the instant resistance is over —to beat or abuse a prisoner who is powerless is both unmanly and illegal.

If the offence be less than felony, and the party fly and will not yield himself, and the constable kill or seriously wound him in pursuit, the law will not protect the constable; he would be held guilty of murder or manslaughter (in case of death) even where

the party would otherwise have escaped, and this whether he acts under a Magistrate's warrant or not.

In all cases of misdemeanour it is better to risk an escape than do that which may result in loss of life.

But if such person, either upon an attempt to arrest him, or after the arrest is made, assault the officer to the intent to make his escape from him, and the officer *standing on his guard* wound or kill him, this is no felony, for the officer is not bound to fly or give way—the law is his protection.

Though not *bound* to retreat at all, yet the officer ought not to come to extremities upon every slight interruption, nor without reasonable necessity.

Where a lawful and sufficient warrant issueth against a person for felony, and the constable, to whom it is directed personally, is acting within the jurisdiction of the Magistrate who grants it, and the person who is to be taken under it flies or defends himself with stones or weapons, and the officer cannot take him without inflicting personal injury; should the felon happen to be wounded or killed by the constable, in the endeavour to effect his arrest, or prevent his escape, the law would hold the officer excused. But there is this caution. The case must be one in which it would clearly appear that the felon could not be taken without resort to extraordinary violence.

The law arms the constable with these extraordinary powers, and it is right they should be noted; but in this country, instances in which it has been necessary to bring them into play are "few and far between," and discretion and good temper in the constable will nearly always prove successful without resort to extraordinary violence. I would reiterate, that, whenever necessary, a constable may call upon any by-stander in the Queen's name to assist him in making an arrest, or securing an offender; and that private persons acting in aid of the officer are entitled to the same indemnity as the officer, for their acts in his aid; that *resistance* or *interference* with the officer in making an arrest, is illegal, and subjects the parties to an indictment; that the third person espousing the cause of a prisoner, lawfully apprehended, and in the custody of a constable, and encouraging the prisoner to resist, may be imprisoned by the officer for thus opposing the operation of Justice; that any rescue or attempt to rescue a prisoner from a constable, subjects the offender to imprisonment in jail, or to be sent to the penitentiary, according to the nature of the offence, or the circumstances attending the rescue; and that if a party be convicted of an assault upon a

constable in the due execution of his duty, or upon any person acting in aid of such officer, the Court may sentence the offender to imprisonment for two years; and moreover should a party arrested escape, the constable, on fresh pursuit, may retake him, whether he find him in the same or a different county: but if the constable does not immediately follow the prisoner he should have an escape warrant from a Magistrate.

Duty after arrest.]—The constable should impose no more force or restraint than may be necessary to prevent escape. Where the charge is for assault, or other comparatively minor offence, and the defendant is of good repute, and there is no probability of his absconding, less restraint may be considered necessary than in offences of a greater magnitude.

The age and bodily strength of a prisoner are matters to be thought of by the constable in determining the amount of restraint he will use. He certainly ought to treat his prisoner with kindness and humanity, and should use no unnecessary severity or constraint. Yet it is his bounden duty to use all reasonable precaution to prevent escape, especially for serious offences, or if there be any apprehension of an attempt to escape on the part of the prisoner, or rescue by others. If several persons are arrested for an offence, and it be a serious one, the parties should be kept separate from each other, and not permitted to have any communication previous to being brought before the Magistrate for examination.

General directions.]—Where the constable has made an arrest, with or without warrant, he should, as soon as possible, bring the party before a Magistrate, according to the terms of the warrant, and if guilty of any unnecessary delay he will be liable to punishment; but if the arrest be made in or near the night, or at a time when the prisoner cannot well be brought before the Magistrate, or if there be danger of rescue, or the party be ill and unable then to be brought up, the constable may secure him in the County Gaol, in a lock-up house, or other safe place till the next day, or until it may be reasonable to bring him up before the Magistrate; but a warning is again given against any *unreasonable* detention.

If the warrant be to bring the party before the Magistrate who issued it, the constable is bound to bring him before the same Magistrate; but if the warrant be to bring him before any Justice of the Peace of the County, then the power of election is in the constable, and not in the prisoner, and the former may proceed to any convenient Magistrate in the County. When the prisoner is brought

before the Magistrate, he is still considered in the custody of the officer, until bailed or discharged, or committed to prison.

ACTING UNDER SEARCH WARRANT.

Mode of Executing it.]—The constable's powers, acting under search warrant, appear to require a separate notice.

With respect to its direction, and the County or place wherein it may be executed, the rule is the same as in other warrants. In executing it, the constable must be careful strictly to pursue its directions. It is usual to direct that it be executed in the day time, but even if not so directed, it is the better course, unless where there is danger of the stolen property being taken away in the meantime. The warrant commonly specifies the place to be searched, the goods to be seized, and the person to be taken. As to the mode of procedure, if the outer door of the house to be searched be shut, and, upon demand, not opened, it may be broken open, and so may inner doors, boxes, &c., after the keys have been demanded and refused.

Proper Precautions.]—The constable should not take away any goods but those specified in the warrant, unless they are indispensable in substantiating the charge of stealing the goods specified.

As great caution is necessary on the part of the constable, to avoid mistakes, he should bring the person who has lost the goods with him, in order to point them out. The constable should come with sufficient assistance to watch outside the house or place, to prevent the things being taken away while he is making a search within. He should bring with him materials for striking a light, if necessary, and he should take sufficient time to make a thorough search.

Disposal of Goods taken.]—When the goods, or any part of them are found, the constable is to bring them, and the person, before the Magistrate according to the directions of the warrant. To restore them to the possession, if so directed, after the examination, by the Magistrate, or if the party is committed, to keep them, if not deposited at the Magistrate's office, in order to their being produced at the trial. The goods may be marked, or otherwise be thoroughly examined by the constable, that he may have no hesitation in afterwards identifying them.

If a horse, &c., is the subject it is sometimes given to the supposed owner, on his entering into recognizance to prosecute, and giving security that the animal shall be forthcoming; or it may be put to livery; but the constable will of course follow the directions of the Magistrate in this particular.

Service of Summons.]—Without going minutely into the question, little can be said on the head of service of summons in cases of misdemeanour, &c. To speak in general terms, the summons should be served as long as possible before the time appointed for the hearing, in order to enable the party to prepare his defence. [Mr. Chitty in his *General Practice of the Law* (Vol. 2, p. 175,) says, the time appointed must always allow sufficient opportunity between the service of the summons and the time of appearance, to enable the party to prepare his defence and for his journey; and the Justice should in this respect take care to avoid any supposition of improper hurry, or he may incur the censure of the Court of King's Bench, if not be subject to a criminal information. The precise time will generally depend on distance, and the other circumstances of each particular case. With analogy to other branches of the law, a man ought not to be required *omissis omnibus aliis negotiis* instantly to answer a charge of a supposed offence necessarily less than an indictable misdemeanour, on the same or even the next day, and should be allowed not only ample time to obtain legal advice and assistance, but also to collect his evidence; and even the convenience of witnesses should be considered; and therefore in general several days should intervene between the time of summons and hearing. In the superior Courts, in general, at least eight days' notice of enquiry and of trial are essential for the preparation of the defence; and a charge of an inferior offence may require full as much time, as there has not upon such a charge been any antecedent notice of the proceeding, as in actions; and as these charges are frequently made by parties under sudden excitement, it is better to allow them time to cool; and no inconvenience can result from delay, for if it be expected that the alleged offender will abscond, he may, in many cases, be apprehended in the first instance. Where the summons was to appear on the *same day*, the Court held it extremely unreasonable, as the party's attendance might be impossible, or he might not be able to collect his witnesses on so short a warning; but the Court held the objection aided by the defendant's appearance, and entering into his defence without praying further time.] Where the summons is in the form of a precept to the constable, an examined copy should be served and the original kept; where the summons is directed to the party, the original should be served and a copy thereof retained.

In general, the service must be *personal* on the offender, but

some particular statutes authorize the service on grown up persons, at the offender's place of abode.(*a*) But when not expressly dispensed with by the particular statute, the copy of the precept, or the original summons, as the case may be, must be personally served on the defendant. [Lord Chief Justice Parker (says Mr. Payley, in his *Treatise on Convictions*, Vol. 1, p. 23,) was of that opinion; and that the provisions, specially introduced into many Acts of Parliament, to make a service at the dwelling house sufficient, seem to justify the inference that the law in other cases is understood to require a service upon the person.

Under the Acts of 4th and 5th Victoria, chapters 25 and 26, (which are of a general nature and practical importance,) a service may be made upon the party either by "delivering the same to him personally, or by leaving the same at his usual place of abode" (See section 57, of the first named Act, and section 30, of the latter.)—While under the 4th and 5th Victoria, chapter 27, section 40, the service of the summons, is made on the defendant by *delivering the same to him*,—so that,as already mentioned, it may be safely laid down as a general rule that unless the particular statute authorize a service by leaving the summons at the party's residence, it must be proved on the hearing that *he actually received* the summons in due time to enable him to attend].

On the return day of the summonses, the constable should be present at the Magistrate's office to make proof of service, and be in attendance at the hearing.(*b*)

Execution of Distress Warrant.]—The warrant to levy a pecuniary fine or penalty, on a summary conviction, is given by express authority of particular statutes. A constable is the proper officer to execute it, and if it be delivered to him a reasonable time before the day appointed for the return, he is bound to execute and return it, and is indictable for refusal or wilful neglect.

(*a*) Even in those cases where a Statute authorizes service at the dwelling-house if the party do not appear, and the Magistrate, on enquiring into the time and circumstances of the service, finds it to be doubtful whether the defendant actually received the summons in time, the hearing ought to be adjourned that a fresh summons may be served. Where a defendant has been served with a summons, but too late to enable him to prepare for his defence, he should attend before the Magistrate on the day, state his objection as to the time, and require an adjournment to another day, which the Justice would be bound, on reasonable cause shewn, to grant.

(*b*) If the Magistrate be not ready to proceed to the hearing at the appointed hour, the constable as well as the party must *wait* during all reasonable hours of the same day.

It is usually directed to a particular constable by name, as is also the warrant of commitment; but what has been said in respect to the direction of warrants generally, and where, and by whom they may be executed, will apply to the distress warrant, and warrant of commitment. The distress warrant is in the nature of an execution, and everything under the head of goods and chattels, (except defendant's wearing apparel) such as cattle, furniture, grain, &c., may be seized and sold under it. The warrant usually specifies the time to be allowed between seizure and sale. [By Statute 27, Geo. II., chap. 20, sec. 1, it is enacted, that in all cases where any Justice of the Peace is, or shall be required or empowered by any Act of Parliament, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by or in consequence of such Act, it shall be lawful for the Justice granting such warrant therein to order and direct the goods and chattels so to be distrained to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

And by 27 Geo. II., chap. 20, sec. 2, it is enacted, that the officer making such distress shall and may deduct the reasonable charges of taking, keeping, and selling such distress out of the money arising by such sale; and the overplus (if any, after such charges, and also the said penalty or sum of mony, shall be satisfied and paid,) shall be returned on demand to the owner of the goods and chattels so distrained; and the officer executing such warrant, if required, shall show the same to the person whose goods and chattles are distrained, and shall suffer a copy thereof to be taken.

A warrant of distress should be under the hand and seal of the Justice. In returning the warrant the constable should set down in writing, what he has made thereon, and what overplus, if any remains in his hands, and if he finds no goods should state the fact. To authorize a warrant of commitment, it is in some cases necessary that there should first be a return of "no goods" under the Distress warrant; this return should be proved by affidavit of the constable.

The following Form will answer:

Personally appeared before me ———, one of Her Majesty's Justices of the Peace, in and for the County of ———, on the ——— day of ——— A. D. 18— at ——— in the said County,———,Constable of ——— within named, who being duly sworn, upon his oath saith, that he has made diligent

search for, but does not know of, nor can he find sufficient goods and chattels of the within named ———, whereon to levy the within mentioned sum of ——— as therein he is commanded.

Sworn before me at ——— in the County of ——— the day and year above mentioned. } ———
———, J. P. }

]

A Warrant af Commitment by a Justice of the Peace is either for the purpose of a future final adjudication, or to secure a party in safe custody to await his trial for a felony or other offence wherewith he is charged,—or to detain him till he gives bail to appear and answer to the charge;—or it is in the shape of a final order as a warrant to commit in default of sureties to keep the peace;—or (and this is more in the nature of an execution) under the authority of a particular Act of Parliament, to imprison for a certain limited time, or until the payment of a fine imposed as a punishment for the commission of an offence punishable on summary conviction.

Whether the warrant of commitment be for trial or in default of sureties, or in execution for punishment, or on non-payment of a fine, the constable is bound to execute it with despatch, and strictly according to the directions therein contained. It is directed to the constable and the gaoler, the former being required to arrest and deliver over the party to the gaoler, together with the warrant, and the gaoler being required to detain the person according to the directions thereof; unless it expressly be made returnable at a particular time the warrant remains in force until fully executed.

IN RESPECT TO RIOTS, ROUTS, ETC.

In cases of tumultuous assemblies and riots, a Constable is sometimes called upon to act on his general authority, without warrant, but commonly he acts under a Magistrate's orders, verbal or written, and it seems proper to glance at the distinctions the law has laid down respecting them.

An unlawful assembly is a disturbance of the peace by three or more persons barely assembling themselves together with an intention *to do an unlawful act*, but neither executing it, nor making any motion towards executing it. Any meeting whatever of a great number of persons under such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies amongst the Queen's subjects, seems properly to be an unlawful assembly;—as where great numbers complain of a common grievance, and meet together, armed in a warlike manner, in order to consult together concerning the means of recovering their interests, for no one can see

what will be the event of such an assembly. And if the intention of those meeting be to accomplish a common object by violence and intimidation, and the meeting, from its general appearance, and accompanying circumstances is calculated to excite terror and consternation, it is clearly criminal and unlawful.

A Rout is a disturbance of the peace by three or more persons assembling together with an intention to do an unlawful act, and actually making *advances* towards the execution thereof.

A Riot is a tumultuous disturbance of the Peace by *three or more* persons assembling together, of their own authority, with an intent mutually to assist each other against any one who will oppose them in the doing of some act of violence, or in the execution of any enterprize of a private nature, and afterwards actually committing violence towards executing the same, as for the purpose of beating a man, or driving away some individual, or particular body or class of men, from his or their lawful employment, or demolishing or pulling down a building, &c. It has been holden that the enterprize must be accompanied by some offer of violence, either to the person of a man, or his possessions; as, by beating him, or forcing him to quit the possession of his lands or goods, or the like. And in every riot there must be some such circumstance either of actual force or violence, or at least, an apparent tendency thereto, as is naturally apt to strike terror into the people; as, the show of arms, threatening speeches, turbulent gestures, &c. Women are amenable at law as rioters, and if a person seeing others actually engaged in a riot, join himself unto them and assist them, he is as much a rioter as if he had at first assembled with them for the same purpose; and any person encouraging, promoting, or taking part in riots, whether by sign, word or gesture, is himself a rioter, (for in this case all are principals) and is answerable for the acts of every one of his associates in furtherance of the common purpose.

If a number of persons meet together at a Bee, or a Wake, or on any other lawful and innocent occasion; and on a sudden quarrel they break the peace and fight, it is but an affray, of which none are guilty but those who actually engage in it; but if they form themselves into parties with a pledge of mutual assistance, and then make a tumultuous affray, it will amount to a riot, because of their confederating together to break the peace.

Unlawful assemblies—routs—and riots are misdemeanours in law, subjecting the offenders to fine and imprisonment.

Now private persons may lawfully endeavour to preserve the

public peace, and to appease disturbances by staying the persons engaged from executing their purpose, and also by arresting the progress of others coming to join in the tumult: and more particularly if a felony be about to be committed, will the interference of a private person be justifiable—for a private person may do anything to prevent the perpetration of a felony—and constables and other peace officers are especially bound to use exertion in restraining and suppressing tumults and riots; and dispersing the offenders by force if it cannot otherwise be accomplished. This duty of the constable I have already partially noticed when speaking of his powers of arrest without warrant.

In suppressing a riot, constables are required by law to do all that lies in their power: all that can be reasonably expected from men of prudence, firmness and activity, under the circumstances. Their proceedings must of course be regulated by their own strength, and the assistance they can command, as compared to the number of rioters, and whether armed or not. But it is to be hoped that any emergency of this kind may not arise, and if it should, that a Magistrate will be present to give directions.

I know not what suggestions to make in the details of duty; but were I acting as a constable, on such an emergency, I would incline to this course—to endeavour to check the tumult in its infancy, by reasoning if possible with the ringleaders, or some of them, and endeavouring to dissuade them their purpose; and call upon all peaceable persons to separate from them, and then, if remonstrances failed, and my party strong enough, I would arrest and secure the ringleaders at once. I would take no notice of irritating language addressed to me. I would pass by impertinence of every kind, carefully avoiding individual quarrel or altercation, or giving word for word; and I would *keep together with my party* as much as possible.

Should the riot be of a serious and dangerous nature, and the number engaged in it amount to twelve or more persons, and a Magistrate, Sheriff, or other head officer, read the proclamation, under *the Riot Act*, requiring the rioters to disperse themselves and peaceably to depart; and if, notwithstanding such proclamation made, the parties engaged, still continue riotously and tumultuously together by the space of one hour after such command to disperse,—they are more than rioters—they become *felons;* and by their resistance, in the endeavour to disperse or apprehend them, any of those assembled, be killed, maimed or hurt, all peace officers and constables, and others, aiding and assisting them in the dispersion or apprehension,

will be held free, discharged and indemnified of, for, or concerning such killing, maiming, or hurting. [The proclamation for rioters to disperse, should be made as near them as possible, and in a loud voice. The following form is taken from the British Statute, 1 Geo. IV., chapter 5.

"Our Sovereign Lady the Queen chargeth and commandeth all persons "being assembled, immediately to disperse themselves, and peaceably to "depart to their habitations or to their lawful business, upon the pains con- "tained in the Act made in the first year of King George, in preventing "tumults and riotous assemblies. God save the Queen."

]

But whether the proclamation from the Riot Act be read or not, the *misdemeanour of riot remains*, and Magistrates and constables, and even private persons may disperse the rioters by force, if their dispersion cannot be otherwise effected; for the Riot Act only introduces a new offence—remaining an hour after proclamation—without qualifying any pre-existing law, or abridging the means which before existed for preventing or punishing crimes.

IN RESPECT TO BREAKING OPEN DOORS.

Cautions herein.]—Having noticed constables' duties, acting without warrant, it may be well to look to the officer's powers of breaking open outer doors, as well when acting without warrant as under warrant.

Breaking open an outer door or window to enter a man's house is an objectionable and dangerous proceeding, and should only be resorted to in extreme cases. The peace and security of private dwellings is a matter of great importance. The rain may penetrate through a shanty, the snow may beat into it; but still in the eye of the law, a man's house, however humble, is his castle, and he may defend it to the death against illegal assault.

It is only in matters of high concern to the public, and to prevent the ends of justice being frustrated, that the law permits its officer to have recourse to this obnoxious proceeding.

The Rule of Law.]—"Every man's house is his castle" saith the law, but the maxim does not prevail to the encroachment upon and hinderance of public justice. And moreover it must be understood under certain limitations, and as subject to certain restrictions which may be noticed before speaking of a constable's power to break into a house.

The Restrictions.]—The rule extends to *a dwelling house only*,

and not to a stable, barn, or out-house, not connected with the dwelling-house, which may be broken open by a constable in the execution of his duty. The protection of the dwelling house is confined to *outer doors and windows*, intended for the security of the house against persons breaking in.

What doors.]—For if a constable finds the outer door open, or it be opened to him from within, and he enters that way into the house, and admittance be refused to any room therein, he may break open inward doors, if he find it necessary, in order to effect an arrest.

What dwelling.]—The personal privilege of an individual to make his house a sanctuary from arrest, only relates to the occupier, and the several members of his family, whose domicile or ordinary residence is therein; and if a stranger who does not reside in the house, but whose ordinary residence is elsewhere, upon being pursued, take refuge in the house of another, the protection does not extend to *him*—it is not the *stranger's* "Castle," he cannot claim the benefit of sanctuary there; and on no pretence is the occupier to shelter the party when the officers of justice are in quest of him. But if a constable in pursuit of an offender, break into the house of a private man, it is at his peril: that is to say, if the offender be in the house at the time he is justified, not otherwise.

For Recaption.]—Whenever a person lawfully arrested for an offence afterward escape from the constable, and shelter himself in a house, whether it be his own or that of a stranger, and immediate pursuit is made by the constable, if admittance be refused, he may break open outer doors in order to retake the party—for the privilege from arrest, by sanctuary in a house, is confined to *arrests in the first instance.*

The right to break out.]—A man's house, though a castle to himself, may not be converted into a prison for officers; and should a constable in the execution of his duty, or those acting under him, having once obtained lawful entrance into a house, be locked in, they may lawfully break open the doors to regain their liberty.

The demand for admittance.]—Before proceeding further, this general caution to constables is given; to keep strictly within the limits of their authority in respect to breaking open doors, and in every case, *however clear the right may be to break into a house*, for the constable to notify his office and business, and demand permission to enter before he resorts to force. No precise form of words is necessary; it is sufficient to make the persons within aware that he

comes, not as a trespasser, but as an officer of the law, armed with proper authority.

Acting without warrant.]—The constable's authority to break open doors, by virtue of his office as conservator of the peace, acting without a warrant, is strictly confined to cases where an actual breach of the peace is committed in his view, or where he sees a felony committed, or has grounds to apprehend that a felony is likely to be committed, and the affrayers run into a house to escape arrest, the constable in hot pursuit of them would be justified in effecting an entrance, by force, to take them—(nevertheless *in mere breaches of the peace*, if he know the parties, he had better obtain a warrant, instead of taking this course)—also where a violent affray is going on in a house, in the view or hearing of a constable, which is likely to result in bloodshed, or loss of life, (as where there is a violent cry of murder in the house,) the necessity of the case will authorize the constable to get into the house in the readiest manner he can, to stop the affray and prevent further violence or bloodshed. Even a private person may break and enter the house of another, and imprison his person in order to prevent his committing a felony.

Where one is known to have committed a *felony*, or given a dangerous wound, and is pursued by a constable who is denied admittance into a house wherein the offender is sheltered, the door may be broken open in order to take him. It would be otherwise, however, if there was only a mere suspicion of guilt; a warrant should then be obtained.

If the house in which an offending party is supposed to have taken refuge is not his own house, the constable should be sure that the felon is there, for if not there, the constable would, in most cases, be considered in law a trespasser.

Acting under Warrant.]—Upon a warrant for felony, or suspicion of felony, or to compel sureties of the peace, or for breach of the peace, the constable to whom a warrant is directed, may break open outer doors to affect an arrest, if the party is in his own house, *or has taken refuge in the house of another*, after notification, demand, and refusal as I have already mentioned.

Besides the general authority, certain Statutes specially empower outer doors to be broken open, under the warrant to make arrests, or to search premises.

ACTING UNDER PARTICULAR STATUTES.

Authorizing arrest without warrant.]—By several statutes, con-

stables and others are authorized to arrest without warrant. In some cases the power of arrest given by Statute is not new, but superadded to the inherent power of the constable; in other cases the authority to arrest is based on the particular enactment alone.

The most important of these acts are chapters 25 and 26 of 4 and 5 Vic. Chapter 25, is an act for consolidating the laws of the province relative to larceny and other offences connected therewith. It contains many clauses, setting out various offences, with the punishment annexed to them—some indictable, and some not indictable—and almost every minor injury in the nature of an illegal taking is remedial or punishable on summary conviction before Justices of the Peace. The 55th section, for the more effectual apprehension and discovery of persons punishable under the Act, either upon indictment, or upon summary conviction, provides that any person *found committing* an offence punishable by virtue of the Act, may be immediately apprehended without a warrant by any peace officer, or by the owner of the property in respect to which the offence shall have been committed, or by the servant of any person authorized by such owner, and forthwith take him before some neighbouring Justice of the Peace, to be dealt with according to law.

Chapter 26, (4 and 5 Vic.) is an Act to consolidate the laws of this Province relative to malicious injury to property. It likewise sets out the various offences *in relation to real and personal property*, and is very comprehensive in its enactments in relation to damage, injury, or spoil, to real or personal property, public or private—not being a mere illegal taking or stealing—but small injuries *wilfully* or *maliciously* committed; and for this class of cases, provides a remedy and punishment, by summary proceeding before Justices of the Peace.

This Statute likewise contains a provision similar to that in chapter 25, that any person found committing any offence under the Act may be apprehended without warrant, and taken before a neighbouring Justice.

To enter into the details of these enactments would be beyond my object; but I would observe that the object in view, in giving the power to arrest without warrant, seems to be evidently to meet cases where offences are committed by unknown or transient persons, or by disorderly characters, having no fixed abode, who might escape before a warrant could be obtained; and therefore a constable ought not to consider himself authorized by these Statutes to

arrest without warrant any settler or other respectable resident who can be found at any subsequent time, should process of law be issued against him. And to justify the apprehension without warrant, the offender must in general be *found*—that is, seen or discovered—by the constable, in the *actual commission* of the offence, and taken *at the time;* but if the offender run away and be taken in immediate pursuit, the arrest would be legal. As in other cases of arrest without warrant, the offender should be brought promptly before some neighbouring Justice of the Peace.

On suspicion of offence committed.]—The 10th and 11th Vic. makes extensive provision for the prevention of malicious injury to persons and property, by fire, or by explosive or destructive substances; and the 14th section thereof, makes it lawful "for any "constable or peace officer to take into custody, without a warrant, "any person whom he shall find lying or loitering in any highway, "yard, or other place, during the night; and whom he shall have "good cause to suspect of having committed or being about to com- "mit, any felony under the Act, and to detain such person until he "can be brought before a Justice of the Peace, to be dealt with "according to law."

Under the General Election Act, 12 Vic., chap. 27, constables are required to aid in the maintenance of peace and good order at elections; and on the verbal order of the Returning Officer, or Deputy Returning Officer, are bound to arrest disturbers. And at meetings, called under the 7th Vic. chap. 7, they may be required by the Chairman of the meeting to aid and assist him in keeping the peace, and preserving good order thereat.

On suspicion of tendency to commit.]—Certain Imperial Acts, define in very comprehensive terms who shall be deemed *idle and disorderly persons —rogues and vagabonds*—and *incorrigible rogues;* and authorize the arrest of all such persons by a constable, without warrant, in order to their being brought before a magistrate for punishment.

Under these three heads almost every kind of suspicious persons seem to be included, embracing amongst others, "persons who not "having wherewithal to maintain themselves, live idle without "employment, and refuse to work for the usual and common wages "given to the other labourers in the like work, in the parishes or places "where they are;" and "persons wandering abroad, lodging in ale- "houses, barns or out-houses, or in the open air, not giving a good "account of themselves." But I abstain from entering into any

detailed account of the vagrant laws, as they give an undefined and dangerous power, on the mere suspicion of the propensity to commit an offence.

The value of such laws at home, or as far as regards cities and large towns, in this Country, may not be denied, but under ordinary circumstances their enforcement is quite unnecessary in the rural parts, and their provisions, as a whole are inconsistent with the state of society in Canada, and unsuited to the genius of the people. I allude to them chiefly to caution constables against acting under them without a warrant, or special direction from a Magistrate to do so.

Distraining for Rent.]—In case of distress for rent, the constable of the Township in which the goods are taken, may be called to appraise them before sale; and he should attend with two appraisers, and having sworn them, proceed to appraise the goods. [This the constable is required to do by statute 2 Wm. & Mary, Sess. 1, chap. 5, sec. 2, by which it is enacted,

"That where any goods shall be distrained for rent reserved and due upon any demise, lease, or contract whatsoever; and the tenant or owner of the goods so destrained shall not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the chief mansion-house or other most notorious place on the premises, replevy the same; in such case, the person distraining shall, with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish, or place, where such distress shall be taken, cause the goods so distrained to be appraised by two sworn appraisers, (whom such sheriff, under-sheriff, or constable shall swear to appraise the same truly, according to the best of their understandings,) and after such appraisement, may sell the same for the best price that can be gotten for them, for satisfaction of the rent and charges of the distress, appraisement, and sale; leaving the overplus, if any, with the sheriff, under-sheriff, or constable, for the owner's use."

The appraisers employed by the constable should be disinterested parties: it would be illegal to swear the person who distrains, as one of the appraisers, for he has an interest in the business; moreover the Statute says that he with the constable, &c., shall cause the goods to be appraised by two sworn appraisers. In a case where a broker who distrained goods for rent, was afterwards sworn one of the appraisers, and together with another broker valued them to a party who became the purchaser according to such valuation, it was held that the sale was irregular under the Statute.

The proper constable to swear the appraisers is the constable of the parish, or place where the distress is taken, and not the consta-

[ble of the place where the distress is impounded.—(*See cases collected in Harrison's Landlord and Tenant, 2nd Ed. p.* 327.)

The constable must attend with the appraisers at the time of the appraisement, and obtain the inventory of the goods distrained. Having received the goods, the constable administers to the appraisers the following oath:

> "You and every of you shall well and and truly appraise the goods "and chattels mentioned in this Inventory, (*the constable holding in "his hand the Inventory and showing it to the appraisers*) accord- "ing to the best of your Judgment. So help you God."

The constable should then indorse upon the inventory, or annex to it, a memorandum in the following form:—

> Memorandum, that on the ——— day of ——— in the Year of Our Lord, 18—, ——— of the Township of ——— in the County of ——— and ——— of the Township of ——— in the said County of ———, two sworn appraisers were sworn upon the Holy Evangelists, by me ——— of ——— constable, well and truly to appraise the goods and chattels mentioned in this (*or the annexed*) Inventory, according to the best of their judgment.

Present at the time of swearing the above named ——— and ———, as above, and witness thereto,
———
———

As witness my hand,
———, Constable.

After the appraisers have valued the goods, add to the foregoing, the following memorandum of valuation:—

> We the above named ——— and ——— being sworn upon the Holy Evangelists by ———, constable, above named, well and truly to appraise the goods and chattels mentioned in the within (*or annexed*) Inventory according to the best of our judgment, and having viewed the said goods and chattels do appraise the same at the sum of ——— pounds ——— shillings and ——— pence, and no more.
>
> As witness our hands the ———day of ——— A. D. 18—.

Witness:
———

———
———
Sworn appraisers.

When the goods are sold, the produce of the sale as far as necessary is applied in satisfaction of the rent, and the expenses of the distress; if the produce is more than sufficient for the purpose, the residue is to be given to the constable, for the use of the owner of the goods distrained—and it should be handed over by the constable whenever demanded.(*a*)]

(*a*) Although not in direct keeping with the subject treated of, the Editor con-

Requiring aid to other Public Officers.]—Constables may also, in certain cases, be called upon to aid and assist officers engaged in

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ceives that the following forms may not be considered out of place, and that they may prove useful to Landlords generally.

The landlord himself, or any other person, as his bailiff, by an authority from him in writing, may make the distress. The warrant or authority may be in the following form:—

To Mr.———my bailiff:

I DO hereby authorise and require you to distrain the goods and chattels of ———[*the tenant*] in the house he now dwells in [*or* "on the premises in his possession,"] situate in the township of———, in the County of———, for ———pounds, being one year's rent, due to me for the same, on the———day of———last, and to proceed thereon for the recovery of the said rent as the law directs.

Dated the———day of———, A.D., 18—.

———

Being legally authorised to distrain, you enter on the premises, and make a seizure of the distress. If it be made in a house, seize a chair or other piece of furniture, and say, "I seize this chair in the name of all the other goods on the premises for the sum of———pounds, being one year's rent due to me [*or* "to———your landlord] on the———day of———last, ["by virtue of an authority to me from the said———your landlord for that purpose," *provided you distrain as bailiff*].

Then take an inventory of so many goods as you judge will be sufficient to cover the rent distrained for, and also the charges of the distress. Make a copy thereof as follows;

AN INVENTORY of the several goods and chattels distrained by me———[*or, if as bailiff, say* "——— as bailiff to Mr. ———"] this ———day of——— in the year of our Lord 18—, in the dwelling-house, out-houses, and lands [*as the case may be*] of ——— situate in the Township of ——— in the County of ———[*and if as bailiff, say*, "by the authority and on the behalf of the said ———"] for the sum of ——— pounds, being one year's rent due to me [*or* "to the said ———"] for the said house and premises, on the ———day of ——— last, and as yet in arrear and unpaid.

In the Dwelling-house.

1. *In the Kitchen.*

Two tables, six chairs, one cooking stove, &c.

2. *In the Parlour.*

(Describing the various articles seized.)

3. *In the Dining-room.*

(Describing minutely the various articles.)

In the Outhouses.

1. *Barn.*

One fanning mill, fifty bushels of wheat, &c.

2. *Stable, &c.*

One horse, one waggon, &c.

And so on, describing the things according to where they are taken from. At the

the execution of civil process: for example—the bailiff of a Division Court to whom a warrant of commitment or execution is directed

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bottom of the Inventory, subscribe the following notice to the tenant, according as the case may be:—

Mr. ————,

TAKE NOTICE, that I have this day distrained [*or* "that I, as bailiff to———, your landlord, have this day distrained"] on the premises above mentioned, the several goods and chattels specified in the above Inventory, for the sum of ——— pounds, being one year's rent due to me [*or* "to the said ———"] on the ——— day of ——— last, for the said premises;§ and that unless you pay the said arrears of rent, with the charges of distraining for the same, or replevy the said goods and chattels within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

Given under my hand, the ——— day of ——— in the year of our Lord one thousand, eight hundred and ———.

————.

The notice of distress of growing crops, under Stat. 2 Geo. II., chap. 19, sec. 8, is as follows:

Mr. ———,

TAKE NOTICE, that I have this day taken and destrained [*or* "that as bailiff to ———, your landlord, I have taken and distrained,"] on the lands and premises above mentioned, the several growing crops specified in the Inventory, for the sum of ——— pounds, being two quarters' rent due to me [*or* "to the said———"] on the——— day of———last, for the said lands and premises, and unless you previously pay the said rent, with the charges of distraining for the same, I shall proceed to cut, gather, make, cure, carry, and lay-up the crops when ripe, in the barn or other proper place on the said premises, and in convenient time sell and dispose of the same towards satisfaction of the said rent, and of the charges of such distress, appraisement and sale, according to the form of the Statute in such case made and provided.

Given under my hand, the ——— day of ——— in the year of our Lord one thousand, eight hundred, and ———

————.

Upon such notice and immediately following the above should be made a memorandum to the effect that a true copy had been delivered to the tenant.

A true copy of the above Inventory and notice must either be given to the tenant himself, or to the owner of the goods, or left at the tenant's house, with any person dwelling therein; or, if there be no person in the house, on some notorious part of it, or, if there be no house, on the most notorious place on the premises. And it is proper to have a person with you when you make the distress, and also when you serve the Inventory and notice, to examine the same, and to attest the regularity of the proceedings, if there should be occasion.

The goods may be removed immediately, and in the notice the tenant may be

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§ If the goods are secured on the premises, under the authority of the Statute 11 Geo. II., ch. 19, sec. 10, insert the following: "And having secured the said goods and chattels in the Stable, &c., on the said premises."—1 Dougl., 279.

from the Court he is bailiff of, and all constables not only may, but must, within their respective jurisdiction, and in the execution of every such warrant; and generally constables should render aid to all officers of justice, in the just and lawful discharge of their official duties.

DUTIES IN RESPECT TO CORONERS.

I would briefly say that a constable has a duty to perform under Coroners, as well as Justices.

Should a death occur from violence or unfair means, or through culpable or negligent conduct, the Constable of the place should no-

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made acquainted where they are removed to, but it is now most usual to put a man in possession, and let them remain on the premises till you are entitled by law to sell them, which is the sixth day inclusive, after the distress made; *i. e.* goods distrained on the Saturday, may be removed on the Thursday afternoon following.—*Wallace* vs. *King*. 1, H. Black, 13.

If the tenant require further time for the payment of the rent, and the landlord choose to allow it, it is best to take a memorandum in writing from the tenant to the following effect, so as to prevent the landlord from being deemed a trespasser, which after the expiration of five days, he otherwise would be, and might have an action of trespass brought against him for staying longer upon the premises.

Mr.———

I, HEREBY desire you will keep possession of my goods, which you have this day distrained for rent due (or alleged to be due) from me to you, in the place where they now are, being in the back room of the house in which I now reside, said house being situated in and upon Lot Number———, in the——— Concession of the Township of———, in the County of——— [*being the premises where the distress was made*] for the space of seven days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time, to enable me to discharge the said rent; and I will pay the man for keeping the said possession.

Witness my hand, this———day of———, A.D., 18—

Witness, }
——— }

———

Under the Act of 1st Victoria, chap. 16, entitled, "An Act to regulate the costs of levying distresses for small rents and penalties," the following schedule of fees can alone be demanded for any sum under £20:—

Levying distress under ten pounds,—five shillings,

Man keeping possession, per diem,—three shillings and nine pence.

Appraisement, whether by one appraiser or more,—four pence in the pound on the value of the goods.

If any printed advertisement,—not to exceed in all five shillings.

Catalogues, Sale and Commission, and delivery of goods,—one shilling in the pound on the net produce of the sale.

tify the nearest Coroner thereof, while the body is fresh; and, if possible, while it remains in the same situation as when the party died. He should attend the Coroner when he arrives. [The language used in the Provincial Act 13th & 14th Vic., chap. 56, regulating the duties of Coroners, shows fully the circumstances under which it would be proper for a constable to notify a Coroner. The first section of that Statute runs thus:—

"No inquest shall be holden on the body of any deceased person by "any Coroner until it has been first made to appear to such Coroner, that "there is reason to believe that such deceased person came to his death "under such circumstances of violence or unfair means, or culpable or negli- "gent conduct, either of himself or of others, as require investigation, and "not through any mere accident or mischance."

The following form of summonses on the Coroner's warrant to summon a jury may be found useful.

SUMMONS.

County of ——— } By virtue of a warrant under the hand and seal of
To wit: } ———, Esquire, one of Her Majesty's Coroners for this County, you are hereby summoned personally to be and appear before him as a Juryman on the ——— day of ——— instant, at ——— o'clock in the forenoon of the same day, at the house of ——— in the Township of ——— in the said County, then and there to enquire on Her Majesty's behalf, touching the death of ———, and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave—Thereof fail not at your peril.

Dated the ——— day of ——— A. D. 18—.

To ——— of the Township of ———, yeoman. } ———, Constable of the Township of ———.

Having served the number of persons named in the Coroner's warrant with summonses to attend, the constable should make out and sign a *Schedule* or list of their names, attach it to the warrant, and then endorse on the warrant the following return:—

The execution of this warrant appears by the schedule thereunto annexed.

The answer of ———, Constable of the Township of ———.

————]

If a warrant be directed to him to summon a jury, he should serve summonses on the particular number of jurors named in the warrant, to appear at the time and place appointed for the purpose of inquiry; attend at the inquest, call over the names of the jury, and remain in attendance to obey the Coroner's mandates in the progress of the investigation. The Coroner's warrant for the ap-

prehension or commitment of a party he should execute in the same way as a Magistrate's warrant.

IV. THE CONSTABLE'S REMUNERATION.

It is a great mistake to view the office of constable as a post of profit; on the contrary, it may be looked upon as one of those burdensome offices which, in securing the objects of society, it is necessary for nearly every citizen, suited for it, to take in his turn.

There are many risks to be incurred and some things to be performed for which no compensation is allowed; but for the most part, there is a set fee payable for each particular service—in some cases payable by the parties, in others out of the County funds and Provincial Revenue. The constable's accounts are in general paid by the County Treasurer, after audit by the Magistrates in Quarter Sessions, and the County Auditors.(*a*)

(*a*) The practice in auditing Accounts connected with the administration of Justice, &c., is not uniform in the several Counties in Upper Canada. In some Counties, we believe, Accounts are paid by the County Treasurer on the order of the Magistrates; in other Counties without any order, but merely on the audit and report of the County Board of Auditors.

A question arises under the 9th Vic., chap. 58, whether parties claiming payment for services performed, and expenses incurred in the administration of justice in criminal matters are given a claim directly against the Province, or whether the effect of that Statute is to make the Province debtor to the Counties respectively for the expenses enumerated in the Statute, on their being ascertained in the appointed manner; the latter is the correct view in our opinion, viz: that officers performing services have their claim directly upon their County; but that their accounts must be made out in such form, and accompanied with such vouchers, as may be required under the authority of the second section of the Act. And that when the several amounts for which the Province is liable, are settled according to the regulations made under the second section, the Province becomes liable to each County for the amount settled on final audit.

The County, then, debtor to the party, the 7th Vic. chap. 18 regulates the mode in which the various accounts due by a county are to be audited and paid, viz.: the accounts must be delivered to the Clerk of the Peace, the first day of each Quarter Sessions to be thereafter audited in Sessions before seven Magistrates at least, and the parties to be paid by the County Treasurer on the Chairman's check. Of course the audit of accounts not connected with the administration of justice is vested, by the Municipal Council Acts, in the County Councils.

It is not easy to perceive on what ground a County Treasurer could assume to

The constables' accounts should show the names of the parties, the nature of the offence, in relation to which the service charged for was performed, and the name of the Magistrate before whom the proceeding is had; and, where there is a charge for mileage, the place from where and to where the travel is made should be stated in the account.

[The following are Extracts from a Minute of the Executive Council respecting the duties of County Auditors:—

"That all accounts for the payment of which, or any part of which the Province is by the Act (9th Vic., chap. 58) liable, shall be rendered in duplicate to the Treasurer of each County during the sittings of the Court of Quarter Sessions, or within three days thereafter, and shall include all the demands of the party rendering the same, (payable by the Province) up to the day of rendering such an account, and refer to the authority for the charge.

"That each such account before rendered to the Treasurer shall be verified by the party, that it is just and correct to the best of his knowledge and belief. And in cases where mileage is charged, there shall be an affidavit stating the places from which and to which the

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himself a power to make payments out of the County Funds, on the report of the Board of Audit, and that body does not possess authority to grant checks or orders on the Treasury for accounts audited by them; they are, as we take it, simply a local Board of enquiry, appointed by the Executive, and their audit has never been regarded as final between the County and the Province.

The proper course seems—for a party to make out the account against the County, and copies thereof in duplicate to be lodged with the Treasurer; any other practice might cause inconvenience and loss to the parties or to the county, and would throw it upon the Accountants to separate their items of claim under two heads; those that would be within the meaning of 9th Vic., chap. 58, under one head, those which would not come within that Act, but nevertheless due by the County under another, head; and this upon the construction given to the 9th Vic. is often a question difficult of determination, indeed many Counties in Upper Canada are now at issue with the Government on the point

The First clause of the 9th Vic., chap. 58, provides that the "expenses of the administration of Criminal Justice" shall be paid out of the public funds of the Province. The third section of the Statute enacts that the several heads of expense mentioned in the Schedule to the Act "shall be *deemed* expenses of the administration of Criminal Justice *within the meaning of this Act.*" The Schedule does not embrace all the items of expense connected with the administration of Criminal Justice, and some of the terms used are ambiguous, and hence the difficulty.

By the Court of Quarter Sessions making it a condition previous to auditing an account, that duplicates shall be lodged with the Treasurer, in the form required by the Government, the matter is put on the safest footing under the existing law. Then the Treasurer on paying each account, ordered to be paid *by the Sessions*, can charge it to the "Administration of Justice Account," and when the portion for which the Province is liable, is received, he can enter it to the credit of the same account.

[mileage is reckoned, as well as the number of miles, and that in no case shall more than the actual number of miles travelled be allowed, nor a greater number of miles than the distance from the Court House to the place of service."

With respect to the *authority* for constables' charges it is for the most part embraced in the "Judges' Tariff." The following is an extract from the order of the Court of Queen's Bench, on the 15th November, 1845, establishing a tariff:—

"*It is ordered*, under the authority of the Statute passed in the eighth year of her present Majesty's reign, intituled, "An Act to regulate the Fees of certain District Officers, in that part of this Province called Upper Canada," that the fees in the table annexed to this rule shall be taken and received by Sheriffs, Coroners, Clerks of the Peace, Constables, and Criers, respectively, in the several districts of this Province, for services rendered by them, respectively, in the administration of justice, and for other district purposes, where such services were not remunerated by any law in force at the time of passing the said act.

"*But it is to be understood*—

"That, besides the fees set down in this table, the several officers will be entitled, as heretofore, to receive fees for other services rendered by them, respectively, which are not mentioned in this table, wherever specific fees for such services are fixed by any statute; the Judges having no authority, under the act referred to in this rule, to make any regulation in such cases."

That portion of the Table of Fees which relates to constables is subjoined:

CONSTABLE.	To be paid out of the County Funds.			To be paid by the Party.		
	£	s.	d.	£	s.	d.
Arrest of each individual upon a warrant. (To be paid out of the County Funds, or by the party, as the case may be.)	0	5	0	0	5	0
Serving summons or subpœna	0	1	3	0	1	3
Mileage, 6d per mile. (To be paid out of the County funds, or by the party, as the case may be)						
Attending Assizes or Sessions, per day	0	5	0	0	0	0
Attending any Justice on trials, under the Summary Punishment Acts, or on the examination of prisoners charged with any crime, for each day necessarily employed	0	5	0	0	0	0
Mileage in going to serve summons or warrant, when the service has not been effected; the Justices						

CONSTABLE.	To be paid out of the County Funds. £ s. d.	To be paid by the Party. £ s. d.
in Sessions to be satisfied that due diligence has been used. (To be paid out of the County funds, or by the party, as the case may be)...	0 0 6	0 0 6
Taking prisoners to gaol, 4d per mile, exclusive of disbursements necessarily expended in their conveyance. (To be paid out of the County funds, or by the party as the case may be) ...		
Summoning Jury for Inquest	0 10 0	0 0 0
Attending inquest for each day other than the first.	0 5 0	0 0 0
Serving notice of appointment of Constables, when personally served	0 2 6	0 0 0
Levying upon distress warrant and returning the same, where charge not provided by law.....	0 5 0	0 0 0
Advertising and selling under distress warrant, where charge not provided by law	0 5 0	0 0 0
Travelling to make distress, or to search for goods to make distress, when no goods are found, 4d per mile, where charge not otherwise provided by law.....		
Appraisement, whether by one appraiser or more, 4d, in the pound on the value of the goods.(*b*)		

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(*b*) The Accounts in the County of Simcoe are made out and verified in triplicate, one copy is delivered to the Clerk of the Peace, the other two to the County Treasurer. This is the form used,

COUNTY OF SIMCOE Dr. to ———— *Constable.*

(Authority for charges—"Judges' Tariff.")

Date.	Nature of Service performed, &c.	Name of Justice before whom proceedings had.	Sums. £	s.	d.
1852 Jan'y. 19th	Arrest under Warrant, for Larceny, in the case of the Queen on the prosecution of John Doe *vs.* Richard Roe. Necessary travel from the Magistrate's Office at Bradford to Bond Head, to make arrest, —— miles.	C. D., Esq.		5	0

I————, Constable, declare that the above Account is just and true, in every particular, to the best of my knowledge and belief.

Constable.

As printed forms are furnished to constables, I need only add, that in all cases it is advisable for the officer, in addition to the usual verification of his account, to get the Magistrate to sign to its correctness.

In executing a distress warrant on a summary conviction, the constable is authorized to levy his charges with the fine imposed; but in cases of felony, costs are not payable by the parties.

It is to be regretted that there is no means in ordinary, adequately to remunerate a constable for zeal and activity, or extraordinary exertions in the public service; but as the law stands the officer must be content to perform his duty cheerfully at the present allowance, insufficient reward will not excuse or palliate any neglect of duty.

V. PROTECTION TO CONSTABLES.

Besides the several Statutes giving particular protections and indemnities to constables, are the following general enactments.:

Against Criminal Resistance.]—Whosoever unlawfully and maliciously shall shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any loaded arms at any person, or shall stab, cut, or wound any person, with intent to maim, &c., or with intent to *prevent the lawful apprehension or detainer of any person*, shall be liable, at the discretion of the Court, to be imprisoned, at hard labour, in the Penitentiary for the term of his natural life, &c., in the Province—(Sec. 11, 4 & 5 Vic., chap. 27), and any assault upon a peace officer, in the due execution

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(N.B.—The names of the parties, the nature of the charge, and the services performed to be fully specified. The Accounts, &c., are to be rendered in triplicate, and transmitted to the Clerk of the Peace, three days previous to the holding of the Court of Quarter Sessions.)

Upon the Account the following Affidavit is endorsed:

County of Simcoe, } I———of the Township of———in the County of Sim-
To wit: } coe, Constable, do swear that the within Account is just and correct in all its particulars, to the best of my knowledge and belief, and that the number of miles travelled, to perform the services therein mentioned, is correctly stated, as well as the place from which and to which the mileage is reckoned in each case.

Sworn before me, at———
the——day of——, A.D., 18—
———J. P.

———

of his duty, or upon any person acting in aid of such officer, or any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party, so assaulting, of any other person, for any offence for which he or they may be liable to be apprehended or detained, is punished under 4 & 5 Vic., chap. 27, sec. 25, for as long as two years; and it has been already noticed that for assault on special constables in the discharge of their duty, a heavy fine may be imposed on summary proceeding, or an indictment may be preferred against the party offending.

Against Civil Actions.]—Several particular Statutes contain clauses for the protection of persons acting *bonâ fide* in the execution of them; though it may be in mistaken exercise of the powers they confer—requiring notice of action to the constable, &c., before action brought; authorizing a tender of amends, and depriving the plaintiff in a suit against an officer, &c., of his costs in certain cases.

The Act of last Session (14 & 15 Vic. chap. 54) is a general Act, amending and consolidating the laws affording protection to Magistrates and others in the performance of public duties. I wish to speak of it in general terms, as its provisions open many questions of doubtful construction.

It repeals so much of such Acts "as were then in force, whether public, local, or personal, as conferred certain privilege as to notice and limitation of action, costs, pleading, evidence, place of trial, tender of amends, payment of money into Court, &c., upon any Magistrate, *public officer*, or *other* person, either by virtue *of his office*, or under the provisions of such Acts:" and the following (in part noted) provisions were substituted: "That no writ be sued out against any officer or person *fulfilling any public duty*, for any thing by him done in the performance thereof; whether the duty arises at Common Law, or is imposed by Statute, without one calendar month's notice, &c. That the officer or other person acting as aforesaid, may within the month, tender amends to the party complaining, which may be pleaded in bar of any action to be brought, and if found to be a sufficient tender the officer to have judgment. That such actions shall be brought and tried in the County where the act complained of was done. That the officer, &c., may pay money into Court whether he has made a tender of amends or not, as in ordinary actions. That if in any action brought, judgment is rendered in favour of the officer, he shall recover of the Plaintiff all the costs payable to his Attorney, and that no action shall be brought against any officer, &c., acting as aforesaid, unless commenced

within six calendar months after the act was committed, and that any justice, officer, or other person, acting as aforesaid, should be entitled to such protection and privileges in all such cases as he should act *bonâ fide* in the execution of his duty: although he might exceed his powers and jurisdiction." Thus (without pausing to consider the policy of all the enactments in the Statute,) we see how completely the legislature has exhibited the wish to fence around public officers against the consequences of malicious prosecution.

VI. CONCLUSION.

In thus endeavouring to trace out (so far as my many public engagements, and the limited materials within my reach permits) the duties of a constable, I have at least shown the extensive authority pertaining to the office; and, in conclusion, I would say to those to whom what I have said more particularly applies, that as their powers are large, so are their responsibilities great. They are armed for the protection of law and order, and great will be the crime if the weapons they are furnished with, be pointed against the principles they are sworn to maintain.

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